By mail, address to:

MaryAnn Stevens - #08-764 (Antidegradation)
Mail Code 65-40 Rules Section/ Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

OFFICIAL COMMENT

By fax: 317-232-8406.

To Whom It May Concern:
Clearly, there has been no relevance given to the recently adopted Great Lakes Compact if the same violators continue to discharge known pollutants into a now known protected body of water. How does this continue to occur with the protections from EPA, Clean Water Acts and many other state mandates?
Ironically, Indiana was the first to sign on with the Great Lakes Compact, yet continue to be the "per-capita" largest violator of all that the Compact stands for. Why does this continue? Maybe the Compact should have been adopted for just the lower Lake Michigan basin, that way all Indiana violators would have been sited for polluting 100% of the lower basin.
But, when you include the Indiana violators into the all-inclusive waters of all Great Lakes, they are seemingly insignificant.
Please take pause with this action, this is not a solution nor is it a remedy, this is a quick fix to a self-created issue, and our fresh waters are not given to any one entity for personal gain. It's our continued duty to protect them, and to dis-continue the actions of the known abusers.
Ironically, our states permit waters to be harvested in their purest form upstream of all human contact, yet at the same time our states also permit the discharge of chemicals that are not fit for human contact into our lakes, specifically Lake Michigan.
How does this makes any sense to anyone with any degree of intelligence?
A common sense solution would be to only allow the harvesting of fresh waters from Lake Michigan just off the Indiana coast, by doing this, it would require that the bottled water companies filter and purify the water to tolerances fit for human consumption, and at the same time clean the very chemicals that are being allowed and permitted to be discharged. The only draw back would be that a single 12 ounce bottle of water would increase in cost to $100 each.
Clearly, no one would buy water at this cost, so why are you asking us, the public, to buy the argument that these continued discharges are in the public good.....??
It is your duty to defend that which has no voice, our Lake Michigan waters, for the future of the common good for all.

Exemption 6
Architect
Exemption 6
member Great Lakes Surfrider chapter

Pamela F. Faggert
Vice President and Chief Environmental Officer

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IDEM
OFFICE OF
WATER QUALITY

November 12, 2008

2008 NOV 17 P 2:22

OFFICIAL COMMENT

Ms. MaryAnn Stevens
Mail Code 65-40
Rules Section, Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Re: First Notice on Indiana's Antidegradation Standards and Implementation Procedures

Dear Ms. Stevens:

Dominion appreciates the opportunity to comment in this first notice of changes being considered to Indiana's antidegradation regulations for surface waters in title 327 IAC. We understand that this rulemaking process could take up to 2 years with additional opportunity for public comment after a draft rule is approved by the Indiana Water Pollution Control Board.

Dominion State Line, Inc.'s State Line Power Station is located in Hammond, Indiana on Lake Michigan, a designated Outstanding State Resource Water (OSRW-Tier 2.9). In 1997, Indiana adopted antidegradation implementation procedures only for the Great Lakes Basin and State Line has therefore been subject to these regulations since that time. The current rulemaking proposes to extend antidegradation requirements to all surface waters of the state with potential changes to how the rule is implemented, including in OSRWs.

The first notice lists several alternatives or issues under consideration in drafting a proposed rule and we offer the following comments on them:

1. Applicability – We agree with the current approach that an antidegradation review is required when a new or increased discharge triggers the need for a new or modified NPDES permit limit due to a significant lowering of water quality above a de minimum allowance. We support continuing a de minimus aspect for OSRW waters in the applicability section for which antidegradation procedures do not apply.

2. Mixing zones – We understand that the current approach is to define a de minimus level as the background level for OSRW waters, without considering

any mixing. Dominion believes it is appropriate to consider mixing and mixing zones, especially in high volume waters such as Lake Michigan.

3. Exemptions – Dominion supports the inclusion of a provision in the proposed regulations that a determination in accordance with Section 316(a) of the Clean Water Act concerning alternative thermal effluent limitations be considered consistent with the antidegradation standards. These determinations or variances involve comprehensive scientific studies to assure the protection of aquatic communities and therefore it is appropriate to exempt this action from antidegradation reviews.

   In addition, any new rules should maintain the exemption of any new wastewater discharge that occurs as a result of a federal or state requirement to install air pollution control equipment. If not exempted, at a minimum a streamlined review process should be developed that has been discussed among the various stakeholders.

4. Social/Economic review – Dominion supports expanding the list of factors in a social/economic justification to allow the lowering of water quality to include positive benefits to the area of the discharge as well as negative impacts.

5. Watershed projects – To allow an individual discharger to comply with antidegradation requirements in OSRW's, watershed projects should be allowed. Dominion supports the option to allow either the implementation of a water quality project in the watershed of an OSRW or the payment of a fee, with a cap, based on the type and quantity of the increased pollutant loading.

If you have any questions concerning these comments, please contact Jud White at 804-273-2948.

Sincerely,

Pamela F. Faggert

Pamela F. Faggert

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Nov. 13, 2008
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OFFICIAL COMMENT

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Dear Ms. Stevens, Mr. Easterly, Mr. Pigott, and Ms. Mettler:

The Indiana Department of Environmental Management published a first notice of comment period on the development of new rules and amendments to rules concerning antidegradation standards and implementation procedures, LSA Document #08-764, in the Indiana Register on October 15, 2008. The environmental organizations listed below offer the following comments pursuant to this first notice.

These comments represent opinions and interests of the following organizations (in alphabetical order):

- The Alliance for the Great Lakes is a not-for-profit conservation organization that works to conserve and restore the Great Lakes resource through policy, education, and local efforts, to ensure a healthy Great Lakes and clean water for generations of people and wildlife.
- The Conservation Law Center is a not-for-profit public interest law firm located in Bloomington, Indiana, and operates the Conservation Law Clinic under an agreement with Indiana University School of Law.
- The Eastern Surfing Association is the largest amateur surfing association in the world, was founded as a non-profit organization in 1967 and has grown to more than 10,000 members from Maine to Florida and the Great Lakes to the Gulf coast."
- The Environmental Law & Policy Center is a not-for-profit public interest environmental legal advocacy and eco-business innovation organization. ELPC develops and leads successful strategic environmental advocacy campaigns to solve environmental problems and improve the quality of life in our Midwestern communities.
- The Hoosier Environmental Council is a not-for-profit environmental organization which aims to address Indiana's environmental challenges through education and advocacy. The HEC is guided by science, inspired by the ties between nature and humanity, and led to success through partnerships.
- The Natural Resources Defense Council is a not-for-profit environmental organization with 1.2 million members and online activists nationwide. NRDC seeks to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends.
- Save the Dunes is a not-for-profit conservation organization that seeks to preserve, protect, and restore the Indiana Dunes and all natural resources in Northwest Indiana's Lake Michigan Watershed for an enhanced quality of life.
- The Sierra Club is an international not-for-profit membership organization, headquartered in San Francisco, California, with more than 1.3 million members and supporters. Sierra Club's mission includes practicing and promoting the responsible use of earth's ecosystems and resources, and protecting and restoring the quality of the natural and human environment. Sierra Club's Hoosier Chapter has more than 7,000 members.
- The Surfrider Foundation is a non-profit grassroots organization dedicated to the protection and enjoyment of our world's oceans, waves and beaches. Founded in 1984 by a handful of visionary surfers in Malibu, California, the Surfrider Foundation now maintains over 50,000 members and 80 chapters worldwide.

Members of these organizations or the organizations they represent live, work, and recreate near or on waters that are or will be affected by facilities that discharge pollutants into these waters under Clean Water Act permits issued by IDEM. These individuals will be directly affected by Indiana's development of new rules and amendments to rules concerning antidegradation standards and implementation procedures.

IDEM's first notice of comment period for antidegradation rulemaking solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

We begin our comments in Part I with the purpose of the antidegradation rule, then comment in Part II on the alternatives and issues identified as important to the rule, and close in Part III with suggestions for the development of draft rule language.

I. The Purpose of the Antidegradation Rule

The basic purpose of a state antidegradation program, and the key principle of antidegradation policy, is to maintain and protect existing water quality, even where that water quality is better than applicable standards. The United States Environmental Protection Agency (EPA) Region VIII Guidance states this principle directly:

> Antidegradation recognizes that existing water quality has inherent value worthy of protection. Thus, unlike other aspects of water quality standards that are directed toward attainment of fully-protective levels of water quality (as defined by the applicable criteria), the purpose of antidegradation is to maintain and protect *existing* levels of water quality.[1]

Another way of stating this principle is with reference to the available assimilative (loading) capacity of a waterbody.[2] EPA, in interpreting the Clean Water Act, has stated that the assimilative capacity of a waterbody is "a valuable natural resource."[3]

Indiana's antidegradation rule must comply with the policy of the United States as stated in the Code of Federal Regulations. In addition, Indiana's rule must comply with EPA's interpretations of antidegradation policy and implementation requirements, as expressed in various guidance documents. Indiana may provide additional protections where needed, however, and indeed has decided that some waterbodies, such as Lake Michigan, deserve special protections not afforded to other high quality waters. Finally, Indiana's antidegradation rule must be logical and comprehensible to the public and the regulated community, and afford the public an opportunity to participate in the choices that must be made to implement the antidegradation policy.

II. Alternatives for Achieving the Purpose of the Antidegradation Rule

The following comments are structured to correspond to the "Alternatives To Be Considered Within the Rulemaking" sections set forth within the first notice.

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[1] U.S. EPA Region VIII Guidance: Antidegradation Implementation (August 1993), page iii (emphasis added).
[2] Assimilative capacity can be defined as the amount of loading that can be allowed while protecting existing conditions and assuring that the new or increased loading does not cause or contribute to a violation of water quality standards.
[3] Ephraim King, Director Office of Science and Technology, U.S. EPA, in guidance letter to Water Management Division Directors dated August 10, 2005.

Alternative 1. Scope of Rulemaking

The rulemaking should apply to all surface waters of the State of Indiana. "Each State must develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation through the water quality management process."[4]

Alternatives 2 and 7. De Minimis Loadings, Cumulative Cap on Exempted Loadings, and Exemptions in General

This section provides specific comments on three issues that are logically and conceptually linked: *de minimis* loadings and cumulative caps for Tier 2 protected waters; *de minimis* loadings and cumulative caps for Indiana Tier 2.9 protected waters; and exemptions in general.

***De minimis* and Cumulative Cap for Tier 2**

The following comments apply to non-BCCs only, since EPA and the courts have stated that BCCs cannot be subject to a *de minimis* exemption.[5]

A *de minimis* loading of a pollutant is a quantity of pollutant that is too small to worry about because it will not cause a significant decrease in water quality. EPA and courts have accepted the application of a reasonably small *de minimis* for waters subject to Tier 2 protection, if properly implemented.[6] Pollutant loadings below *de minimis* levels are exempted from the antidegradation demonstration normally required under Tier 2 antidegradation policy.

A *de minimis* must be coupled with a ceiling (*i.e.*, cap) on the cumulative loadings into a waterbody that are allowed under the *de minimis* exemption. Without a cumulative cap, the risk of using up the entire assimilative capacity without any showing of necessity or importance is uncontrolled.[7]

Importantly, the cumulative cap should be a ceiling on all pollutant loadings that are exempted from the antidegradation demonstration based on the justification that they are *de minimis*. The recent Sixth Circuit opinion in *Kentucky Waterways Alliance v. Johnson* supports this claim that all exemptions justified as *de minimis* are relevant to the cumulative cap. Specifically, all of the judges in *Kentucky Waterways Alliance* concluded that the legally operative question with

[4] U.S. EPA Water Quality Standards Handbook, Second Edition (August 1994), page 4-2.
[5] In its March 1995 Great Lakes SID, EPA stated: "EPA does not agree that even small increases in the loadings of BCCs to the Great Lakes Basin can be considered de minimis. Low levels of BCCs in the Great Lakes have adverse impacts on the organisms that inhabit them. Further, because BCCs are both resistant to degradation and hydrophobic, they tend to accumulate in sediments and biota, amplifying their effects. For these reasons, even small increases in loadings of this type of pollutant must be considered significant." See also *Ohio Valley Envtl. Coalition v. Horinko*, 279 F. Supp. 2d 732 (S.D.W.V. 2003) (concluding that any individual de minimis for BCCs in Tier 2 waters within the Great Lakes Basin would be contrary to federal requirements).
[6] We note that some states do not apply a *de minimis* in their antidegradation rules.
[7] See *Ohio Valley*, 279 F. Supp. 2d 732 (S.D.W.V. 2003).

respect to the exemption of five categories of discharges in Kentucky's antidegradation rule is the following: "will the extent to which various emitters avail themselves of the exemptions result in significant, rather than *de minimis*, degradation?"[8] The court remanded the matter to EPA because the agency had not addressed "whether Kentucky's Tier-II-review exemptions *together* permit significant degradation."[9] One judge in the case, writing separately, indicated that no more than 10% of a waterbody's assimilative capacity should be used cumulatively by all "exempt" pollutant loadings justified by non-significance.[10]

Courts are rightly concerned that a significant amount of a waterbody's assimilative capacity could be used up by exempt increases in pollutant loadings without any demonstration that such increases are necessary and important, which is required by federal and State antidegradation policy for significant decreases in water quality.[11] In light of this concern, a stringent cumulative cap allowing no more than 10% of assimilative capacity to be used by all "exempt" loadings is quite reasonable.

Current proposals by industry that would allow 90% of a waterbody's assimilative capacity to be used by exempt loadings would mean that the assimilative capacity could be used up almost entirely without *any* antidegradation demonstration of necessity and importance. In fact, the justification for most exempt pollutant loadings is that they, alone or in combination, will not result in a "significant" decrease in water quality. No logic could construe the depletion of 90% of a waterbody's assimilative capacity—a "valuable natural resource"[12]—as an "insignificant" decrease in water quality. Moreover, such a proposal could theoretically leave only 10% of a waterbody's assimilative capacity for proposed loadings that *do* undergo and pass an antidegradation demonstration and which could be quite important socially and economically.

EPA and the courts have already stated that each individual loading of pollutants exempted as *de minimis* must not use more than 10% of the assimilative capacity of the waterbody. If we are correct that courts will strike down a cumulative cap that allows much more than 10% of the total assimilative capacity of a waterbody to be used by loadings "exempt" from antidegradation review by virtue of their insignificance, then the amount of impact allowed for each individual *de minimis* loading is limited. Specifically, the percent of unused assimilative capacity allocated for each individual *de minimis* pollutant loading should be around the 5% range to allow for more than one "bite" from the unused capacity.

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[8] 540 F.3d 466, 492 (6th Cir. 2008).

[9] *Id.* (emphasis added) ("The EPA measured Kentucky's §131.12 compliance by assessing whether each individual exemption resulted in 'significant' or 'insignificant' degradation, but that approach avoids assessing the exemptions' cumulative effects on the State's antidegradation compliance. Because §131.12 regulates degradation, not individual sources of degradation . . . the legally relevant inquiry is whether Kentucky's Tier-II-review exemptions together permit significant degradation, see *Ohio Valley*, 279 F.Supp.2d at 770 n. 3 ('From the perspective of water quality ... it does not matter whether the number of discharges is one or one hundred; the relevant question is how much water quality is lowered by any and all discharges into a water body'). The EPA's decision document avoids answering this question, and we accordingly lack the information needed to meaningfully review the EPA's decision to approve Kentucky's regulations.").

[10] 540 F.3d at 486-88 (6th Cir. 2008).

[11] 40 C.F.R. §131.12; 327 IAC 2-1.5-4.

[12] Ephraim King, Director Office of Science and Technology, U.S. EPA, in guidance letter to Water Management Division Directors dated August 10, 2005.

For high quality streams (but not Lake Michigan), alternatives to calculating unused assimilative capacity for each proposed discharge may be acceptable, as long as these methods respect a cumulative cap allowing no more than 10% of the total assimilative capacity to be used up by exempt loadings. For example, IDEM may allow as *de minimis* those discharges into streams that meet water quality standards at the end of the pipe (*e.g.*, WQBEL with no dilution) whenever there is greater than 20:1 dilution. Where dilution is less than 20:1, however, discharges that meet water quality standards at the end of the pipe will likely use more than 5% of unused assimilative capacity. For these lower-flow situations, simply requiring an antidegradation review would be easier to apply than a 5% unused assimilative capacity rule. This alternative would require an antidegradation demonstration in very few situations in which a *de minimis* exemption is proper.

De minimis for Tier 2.9 (OSRWs and EUWs) including Lake Michigan

For Tier 2.9 protected waters (OSRWs and EUWs), Ind. Code §13-18-3-2(m) requires that Indiana's antidegradation rule provide for a "*de minimis* quantity of additional pollutant load." The designation of Tier 2.9 refers to the extra level of antidegradation protection for these waters that is between Tier 2 and Tier 3 protection. Tier 2.9 is not required by, or referenced in, the federal water quality standards regulation, and the degree of extra protection intended by the Indiana legislature in Ind. Code §13-18-3-2 is unclear.

Section 13-18-3-2 prevents any new or increased discharge of a pollutant into an OSRW or EUW that would result in a significant lowering of water quality unless there is an associated overall improvement in the water quality of that waterbody. This requirement adds protection to OSRWs and EUWs not required for other high quality waters.

Ind. Code §13-18-3-2 does not address the relative or absolute size of the *de minimis* threshold required for OSRWs such as Lake Michigan. Reference background concentration is the most justifiable and practical *de minimis* threshold for Lake Michigan (and other high quality large lakes), for two reasons.

First, the concept of assimilative capacity is not readily applicable to a vast waterbody such as Lake Michigan. A *de minimis* test for discharges into Lake Michigan based on 10%, 5%, or even 1% of unused assimilative capacity would still be a relatively large loading. For perspective, consider that the increases in pollutant loading proposed for the BP Whiting Refinery would have been exempted from an antidegradation demonstration if the *de minimis* threshold had been even 1% of the unused assimilative capacity of Lake Michigan. Note that for Lake Michigan, the requirement that water quality standards be met at the end of the pipe is a basis for wasteload allocations under 327 IAC 5-2-11.4 and is not appropriate as a basis for a *de minimis* threshold.[13]

[13] The same holds for inland lakes and other waters of the Great Lakes system with no appreciable flow relative to their volume. 327 IAC 5-2-11.4(b).

Second, because of the OSRW status of Lake Michigan as well as its symbolic importance, the *de minimis* used for the Lake should be more stringent than the *de minimis* used for other high quality waters.

Reference water quality is a valid *de minimis* under Ind. Code §13-18-3-2, which requires that IDEM provide for a "*de minimis* amount of loading."[14] With such a *de minimis*, facilities would be able to increase pollutant loadings yet stay within the *de minimis* by adjusting the effluent flow of water to keep the pollutant concentration in the effluent below the reference value.

For OSRW and EUW streams, alternatives to calculating unused assimilative capacity for each proposed discharge may be acceptable, as long as these methods respect a cumulative cap allowing no more than 10% of total assimilative capacity to be used up by exempt loadings.

Other Exempt Increases in Pollutant Loadings

Two categories of discharges may be reasonably held "exempt" from a full antidegradation demonstration:

(1) discharges that can be presumed to produce no decrease in water quality or only a *de minimis* decrease in water quality relative to currently permitted levels (*e.g.*, new limits based on improved monitoring or test methods during the 5-year period of permit validity, normal operational variability within current permit limits, a simultaneous decrease of the same pollutant from another outfall of the same facility into the same waterbody, increased loading due solely to an increase of the pollutant in intake water, and a short term and limited loading and effect on water quality);

(2) discharges for which a formal regulatory procedure is in place that sufficiently substitutes for an antidegradation demonstration (*e.g.*, a CERCLA of RCRA action, and a bypass not prohibited by 327 IAC 5-2-8(11)).

Most exemptions will fall into the first category: discharges justified as nonsignificant.

In contrast, two other categories of discharges are *not* appropriately exempted from an antidegradation demonstration:

(1) discharges that produce a significant *net* decrease in the water quality in a particular waterbody, regardless of their effect on the "environment" generally (*e.g.*, a new or increased discharge necessary to accomplish reduction in air pollutant, and any other activities intended to result in a net benefit to the "environment" but not the waterbody);

(2) discharges that may have the potential to improve overall water quality in the waterbody but which will require an analysis of alternatives and impacts (*e.g.*, a simultaneous decrease of the same pollutant from another facility, pollutant trading, and a new or increased discharge from wastewater treatment plant to alleviate public health concern). Such discharges

[14] Ind. Code §13-18-3-2(m)(1).

cannot benefit from a presumption that they will produce only a *de minimis* lowering of water quality, and do not have substitutes for antidegradation demonstration in place.

A few specific examples of improper exemptions deserve further discussion.

Pollutant trading schemes—any proposal to mitigate an increased loading of a pollutant with a decrease in another pollutant—are improper bases of exemption from an antidegradation demonstration. EPA accepts the pollutant trading concept as a tool for maintaining or improving water quality, but only for some pollutants and some situations.[15] First, EPA does not support trading of bioaccumulative pollutants.[16] Second, application of the pollutant trading exemption to the watershed scale must be done with care.[17] For example, "some potential trades that could result in a general water quality improvement in a broad area may also result in acute or chronic localized impacts."[18] Third, pollutant trading must be preceded by a rigorous analysis of the trade:

> There should be an ability to establish water quality equivalence between the location where a pollutant reduction is made and the location where that reduction is purchased or used. This ensures that the water quality impact of trading will be equivalent to, or better than, the pollutant reductions that would have occurred without trading. In addition to ensuring that overall pollutant reduction impacts are equivalent, trades must not create locally high loadings of pollutants or "hotspots."[19]

Similarly, it would be inappropriate to use an exemption as an incentive for economic activity. For example, some interests have proposed that significant discharges associated with brownfield and other redevelopment projects be exempted from an antidegradation demonstration to avoid discouraging such activities with such a regulatory burden. This is a wholly inappropriate use of the exemption concept, and would violate federal antidegradation policy.

Public Involvement in Exemption Decisions

Federal law requires that the public have an opportunity to comment on the IDEM Commissioner's decision to approve or reject an antidegradation demonstration. EPA guidance states as follows:

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[15] See U.S. EPA, Water Quality Trading Assessment Handbook (November 2004) EPA 841-B-04-001.
[16] U.S. EPA, Water Quality Trading Toolkit for Permit Writers, Office of Wastewater Management Water Permits Division, (August 2007) EPA 833-R-07-004, page 10 ("Not all pollutants are necessarily suitable for trading. . . . EPA's Trading Policy supports trading for TN, TP, and sediment and indicates that other pollutants may be considered for trading on a case-by-case basis. EPA does not support trading of persistent bioaccumulative toxics (PBTs).").
[17] U.S. EPA, Water Quality Trading Toolkit for Permit Writers, pages 12-13 ("In general, the geographic scope of a trade should be no larger than necessary to encompass the universe of sources that contribute to a specific water quality problem that is to be addressed through trading.").
[18] U.S. EPA, Water Quality Trading Assessment Handbook, chapter II, pages 16-17.
[19] *Id.*, chapter II, page 6.

> Antidegradation, as with other water quality standards activities, requires public participation and intergovernmental coordination to be an effective tool in the water quality management process. 40 C.F.R. §131.12(a)(2) contains explicit requirements for public participation and intergovernmental coordination when determining whether to allow lower water quality in high quality waters. . . . The antidegradation public participation requirement may be satisfied in several ways. The State may hold a public hearing or hearings. The State may also satisfy the requirement by providing public notice and the opportunity for the public to request a hearing.[20]

This decision on the antidegradation demonstration is an intermediate stage in the process of reviewing a discharger's application for a new or increased discharge. Note that although public notice and comment is also required for the draft NPDES permit, that opportunity does not substitute for advance public input at key intermediate stages during the antidegradation evaluation process.

Public input to the Commissioner's decision to exempt a discharge from an antidegradation demonstration may in some cases be just as important as public input into the antidegradation demonstration decision itself, for two reasons.

First, public review and scrutiny is an integral part of antidegradation policy. EPA guidance states: "the intent [of the public participation provisions in the federal antidegradation policy] is to ensure that no activity that will cause water quality to decline in existing high-quality waters is undertaken without adequate public review."[21] Where the *de minimis* nature of an activity is not clear cut, opportunity for public input into the decision whether or not to grant an exemption is vital to antidegradation policy.[22]

Second, if the rule does not require a formal analysis of alternatives before the IDEM Commissioner grants an exemption for an activity, public input is necessary to explore the range of alternatives. Alternatives to an exemption may obviate the need for the exemption and the subsequent decrease in water quality. Some of the exemptions that have been proposed in the past are controversial and technically complex, and their claimed *de minimis* nature is not clear. These exemptions especially would benefit from public comment and information on alternatives.

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[20] U.S. EPA Water Quality Standards Handbook, Second Edition (August 1994), section 4.8.2., page 4-13.
[21] *Id.*, page 4-7.
[22] The current antidegradation implementation rule at 327 IAC 5-2-11.7(c) provides notice and comment for several exemptions: (1) short term, temporary discharges; (2) discharges due to CERCLA or RCRA actions; (3) discharges due to implantation of approved industrial or municipal controls on wet-weather flows; (4) discharges due to intake of pollutants; (5) discharges where there is a contemporaneous enforceable decrease in the actual loading of the pollutant from sources contributing to the OSRW or tributaries such that there is no net increase in the loading of the pollutant or pollutant parameter to the OSRW; (6) discharges necessary to accomplish a reduction in the discharge of another pollutant.

Alternative 3. DTBELS Based on Federal Effluent Guidelines or Best Available Treatment

IDEM's default technology-based effluent limitations (DTBELs) are based on applicable federal effluent guidelines or, for pollutants without such guidelines, IDEM's best professional judgment of the best cost-effective treatment technology that is readily available. IDEM intends to use DTBELs to allow antidegradation to be assessed for pollutants without water quality criteria.

IDEM's intent to assess antidegradation for all pollutants of concern, whether or not they have associated water quality criteria, is on the right track. We have three concerns with using DTBELs as triggers for antidegradation review or as *de minimis* levels of loading.

First, in many cases the federal effluent guidelines have not been updated for decades, do not reflect the best technology available, and were not intended to be used to trigger antidegradation review. Federal effluent guidelines cannot be guaranteed to result in only *de minimis* degradation of water quality, especially if used in critical or low-flow conditions. We recommend that any facility applying for a new or increased discharge should be able to do better than the federal effluent guideline, and doing so should not exempt the discharge from antidegradation review unless the discharge independently meets the *de minimis* test.

Second, while an effluent limit based on "the best cost-effective treatment technology that is readily available" may be appropriate to consider during antidegradation review, whether or not a treatment technology can be cost-effective for the facility to apply is not an appropriate trigger for antidegradation review. Such a consideration puts the cart before the horse. The recognized understanding of *de minimis* is that the proposed increase in discharge is too small to worry about having a negative impact on water quality. If the increase in discharge is large enough to worry about, then an antidegradation demonstration must be done, and such a demonstration is the appropriate context in which to consider such factors as the cost-effectiveness of treatment technologies. In fact, a new effluent limit will not even be appropriate if the increased discharge is not necessary to accommodate important social or economic development.

Finally, the DTBEL concept may not be appropriate in low flow streams where there is very little mixing. If DTBELs are to be used in these situations, IDEM should set the limits at sufficiently protective levels. Furthermore, we support an approach that defines a *de minimis* discharge for non-OSRWs as the more stringent of a limit based on a DTBEL or a limit based on 5% consumption of unused assimilative capacity per proposed new or increased discharge.

Alternative 4. Social–Economic Justification / Necessary and Importance Demonstration

The basis of the antidegradation demonstration is provided in 40 C.F.R. §131.12(a)(2), which states that no lowering of water quality in waters with Tier 2 protection is allowed unless allowing lower water quality is "necessary to accommodate important economic or social development in the area in which the waters are located."[23] We refer to this test as the

[23] 40 C.F.R. §131.12(a)(2).

"necessary and importance" test. Activities such as new discharges or expansion of existing facilities would presumably lower water quality and would not be permissible unless the State conducts a review consistent with the requirements of 40 C.F.R. §131.12(a)(2).[24]

EPA views the antidegradation demonstration as a stringent test, a test certainly not met by every applicant.

> This provision is intended to provide relief only in a few extraordinary circumstances where the economic and social need for the activity clearly outweighs the benefit of maintaining water quality above that required for 'fishable/swimmable' water, and both cannot be achieved. *The burden of demonstration on the individual proposing such activity will be very high.*[25]

Promotion of Tier 2 antidegradation policy requires two separate inquiries: (1) whether the proposed lowering of water quality is "necessary," and (2) whether the social or economic benefits of the project are "important."

First, the proposed discharge must be "necessary." Satisfying this inquiry demands an analysis of alternatives to the proposed discharge. The "necessary" analysis questions whether it is possible to minimize, mitigate, or avoid the proposed discharge or its impacts to water quality through technology or other means. EPA has stated that "[g]iven the variety of engineering approaches to pollution control and the emerging importance of pollution prevention, the finding of necessity is among the most important and useful aspects of an antidegradation program and potentially an extremely useful tool in the context of watershed planning."[26]

The applicant must provide information sufficient for IDEM to reach a reasoned determination. The burden is on the applicant to show that none of the possible alternatives identified are technologically feasible and that all feasible alternatives are cost prohibitive before IDEM can find that a particular discharge is "necessary." As IDEM stated in the BP Whiting permit fact sheet, antidegradation analysis requires that the applicant "demonstrate that all economically and technically feasible measures have been taken to avoid the action that will result in the new or increased discharge of the pollutant or pollutant parameter including a demonstration that it is not feasible to limit the new or increased discharge to a temporary or short term period."[27]

An alternatives analysis must consider non-discharge alternatives, pollution prevention and substitution alternatives, alternative locations for the activity or disposal, as well as alternative

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[24] The full requirement under the Tier 2 antidegradation policy is that the State must properly find that the discharge is necessary to accommodate important economical or social development in the area in which the waters are located, must fully satisfy all intergovernmental coordination and public participation provisions, and must assure that the highest statutory and regulatory requirements for point sources and best management practices for nonpoint source pollutant controls are achieved.

[25] EPA Water Quality Standards Handbook, Second Edition (August 1994), page 4-7 (emphasis added).

[26] 63 Fed. Reg. 36742, 36784.

[27] IDEM's BP Products North America Inc. Whiting Refinery Fact Sheet for NPDES Permit (March 2007), page 15, *available at* www.in.gov/idem/files/bp_factsheet.doc.

treatment technologies.[28] The availability of end of pipe control technology should also be considered under this analysis. All available alternatives need to be identified prior to eliminating those that can be deemed technically or economically infeasible. A separate analysis should be performed for each pollutant or pollutant parameter for which there may be a significant lowering of water quality.[29]

In addition, the reasoning behind eliminating alternatives should be clearly documented so that IDEM and the public can be assured that any rejection of alternatives is reasonable. If it appears based on the record that an alternative may be reasonably available but the applicant does not to provide the information necessary for IDEM to determine whether it would be "feasible," IDEM should require the applicant to submit additional information or should deny the application.

Second, the activity that the applicant claims requires a new or increased discharge must accommodate important social or economic development in the area of the receiving waterbody. The demonstration of "importance" focuses on the socio-economic benefits of the proposed activity, such as job creation, social services and increased tax base, counterbalanced against the socioeconomic costs of the proposal, such as projected negative socio-economic effects on the community and the projected environmental effects. This balancing concept is key. Socioeconomic development cannot be said to be "important" if the potential economic and social benefits of the project are outweighed by the overall costs to society of allowing additional pollution to the water.[30] Accordingly, if the negative environmental, social, and economic impacts of the action outweigh the positive environmental, social, and economic impacts, then the antidegradation application must be denied.

Often the economic benefits of an activity, such as jobs creation, are more readily quantified than the economic and social costs of the activity. This imbalance in the ability to quantify costs versus benefits may skew the importance analysis since the human mind is often more impressed by quantitative information than qualitative information, regardless of its relative uncertainty. When numeric information is not available, IDEM should consider reasonable public expectations and narrative descriptions. For example, Washington State antidegradation guidance states:

> It is intended that the analysis focus on reasonable expectations and be generally based upon available information. The use of narrative descriptions is acceptable,

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[28] For example, the following alternatives should be considered: improved operation and maintenance of an existing treatment system; recycling or reuse of wastewater; discharge to on-site system; seasonal or controlled discharges to avoid critical water quality periods; discharge to a sanitary sewer; and land application of wastewater. See Massachusetts and Oregon antidegradation implementation procedures.

[29] The Washington State antidegradation implementation procedures provide, for example, that "[t]he rejection of any alternative that would produce a significant improvement in the resulting discharge or water quality must be based on a solid determination that the costs are prohibitively expensive." Washington State Supplementary Guidance Implementing the Tier II Antidegradation Rules (July 18, 2005) WAC 173-201A-320, page 16, *available at* http://www.ecy.wa.gov/programs/wq/swqs/antideg-tier2-guidance.pdf.

[30] See U.S. EPA Region VIII Guidance: Antidegradation Implementation (August 1993), page 21 (stating that the inquiry should "weigh the applicant's demonstration against counterbalancing socioeconomic costs associated with the proposed activity, such as projected negative socio-economic effects on the community and the projected environmental effects").

> and should be encouraged, where numeric information is not readily available. For example, we may not know the lost economic benefits of using up most of the remaining assimilative capacity for a common water quality pollutant, but the relative change in capacity and the fact that newcomers will meet very stringent requirements is important social and economic information. Similarly, it may not be reasonable to put a value on the increased contamination of a popular fishing hole or swimming beach, but it is a social effect that is worthy of discussion and is further illuminated by including information on the estimated number and types of users.[31]

In creating a framework for the importance analysis, it is important to ensure that the positive and negative impacts of the activity are capable of unbiased comparison in a documented weighting scheme. This will likely require that both monetized and qualitative effects, as well as their relative uncertainties, are analyzed on both sides of the equation.

Past proposals for an antidegradation rule have suggested that agencies or organizations other than IDEM are qualified to make the decision pertaining to the economic or social importance of a proposed activity. Let us be clear: it would be bad policy to adopt any presumption that an applicant has met the importance test for antidegradation purposes simply because that applicant's activity has been approved by another agent of the State or found to be economically or socially important by another agency or organization. The importance test reflects a balancing act specific to antidegradation—Do the potential economic benefits of the project outweigh the overall costs to society of allowing additional pollution to the water? This question cannot be answered outside the context of antidegradation and water quality. Although IDEM may use data and analyses from reliable sources to inform its decision on the antidegradation demonstration, IDEM is the agent of the State in the best position to further antidegradation policy by determining when a particular activity is important despite a significant lowering of water quality.

Alternative 5. Water Quality Improvement Project for OSRWs

According to Ind. Code §13-18-3-2 and §13-11-2-50.5, for non-BCCs in OSRWs and EUWs, as well as waters upstream of an OSRW or EUW, any new or increased discharge of a pollutant of concern that results in a significant lowering of water quality for that pollutant shall be prohibited unless the activity causing the increased discharge results in an "overall improvement in water quality in the OSRW or EUW," or the person proposing the increased discharge implements or funds a water quality improvement project in the watershed of the OSRW or EUW that results in an "overall improvement in water quality in the OSRW or EUW."

The phrase "overall improvement in water quality in the OSRW or EUW" is key to the above statutory requirement. The Indiana legislature did not define the phrase, however. IDEM should either define this phrase in the draft rule or should provide guidance for the interpretation and

[31] Washington State Supplementary Guidance Implementing the Tier II Antidegradation Rules (July 18, 2005) WAC 173-201A-320, page 13, *available at* http://www.ecy.wa.gov/programs/wq/swqs/antideg-tier2-guidance.pdf.

implementation of the phrase. Factors that should be considered in evaluating each project that seeks to improve water quality in an OSRW or EUW include the hydrological and ecological context of the waterbody in the watershed; the amount, chemical behavior, and toxicity of the new or increased pollutant; and the likelihood that the project in the watershed will improve water quality in the target OSRW or EUW receiving the new or increased loading.

IDEM must ensure that each improvement project, either implemented or funded by the discharger, actually leads to improvement of water quality in the target OSRW or EUW that receives the new or increased loading. Note that the improvement project must be implemented in the same stream or lake receiving the new or increased loading in order to create "overall improvement in water quality in the OSRW or EUW." No new or increased loading should be allowed if it cannot be clearly shown that a proposed water quality improvement project will result in an overall improvement in the water quality of the OSRW or EUW.

Furthermore, Ind. Code §13-18-3-2(m) requires IDEM to provide in the antidegradation rule:

- criteria for the submission and timely approval of water quality improvement projects;
- a process for public input into the approval process; and
- criteria for using collected fees to fund projects in the watershed that will result in improvement in water quality in the target OSRW or EUW.[32]

A major challenge for IDEM will be to use the fees collected to implement water quality improvement projects that have the mitigating effect required in the target OSRW or EUW. Criteria for selecting projects and monitoring their results in the waterbody receiving the discharge will be key provisions of the rule. IDEM should be careful to fund in-kind projects that will actually offset the particular biological impacts of the added pollutant. While a significant increase in pollutant "A" need not be offset specifically by a decrease in the same pollutant (allowing for pollutant trading schemes), the statutory requirement of an "overall improvement in water quality" must not allow a type of organism to be negatively impacted. For example, increases in a pollutant that affects the reproduction of mussels should be offset by an improvement project that mitigates at least the impact on mussels generally, and not by a project that creates, say, salmon habitat. There can be no "overall improvement" in water quality if the health of one species is sacrificed for the sake of another. The rule also should contain a time frame or time limit for funding mitigation projects from the fund. A project implemented 20 years after the allowed increase in discharge is not likely to effectively mitigate the associated lowering of water quality in the target water receiving the new or increased loading.

Alternative 6. Antidegradation Evaluation Trigger

The application of the antidegradation rule should be triggered by any action that would result in the lowering of water quality in a high-quality water.[33] This trigger simply opens the

[32] Ind. Code §§13-18-3-2(m)(3), -2(m)(4), and -2(m)(6).

[33] See U.S. EPA Water Quality Standards Handbook, Second Edition (August 1994), page 4-7. See also U.S. EPA Region VIII Guidance: Antidegradation Implementation (August 1993), page iii ("Antidegradation requirements are typically triggered when an activity is proposed that may have some effect on existing water quality."). This trigger,

door to the application of antidegradation policy and implementation procedures. The applicant may then qualify for an exemption, or instead may be subject to a full antidegradation demonstration.

Industry representatives have proposed that the trigger to enter the antidegradation rule be either a finding that a new or increased loading has a "reasonable potential to exceed" a water quality standard, or a finding that a new or increased loading requires a "new or increased permit limit." Neither of these proposals is appropriate, for the following reasons.

The limitation of the antidegradation rule to the situation where new or increased pollution has a reasonable potential to cause a violation of water quality standards essentially eliminates all Tier 2 protections and is legally unacceptable. For example, dischargers to the Mississippi River using diffusers do not have a "reasonable potential to exceed" water quality criteria even when quadrupling their discharges. If the reasonable potential to exceed the water quality standard were the trigger for applying the rule, then the only new or increased loadings subject to the antidegradation rule would be those that have a reasonable potential to use up 100% of the assimilative capacity of the waterbody, which is precisely the resource that antidegradation policy is intended to protect.

The limitation of the antidegradation rule to the situation where a new or increased permit limit is required also is not an appropriate trigger for the rule (irrespective of the language in the to-be-replaced 327 IAC 5-2-11.3(b)(1)(B)). Permit limits may be water quality based (WQBELs) or technology based (TBELs). The determination of a WQBEL is linked to the "reasonable potential to exceed," and thus, considering the previous paragraph, a new or increased WQBEL is not an appropriate trigger for applying the rule. In addition, several pollutants of concern do not have water quality criteria, and thus WQBELs are not calculated for these pollutants. However, significant new or increased loadings of these pollutants should not evade antidegradation scrutiny.

A new or increased TBEL also may be inappropriate as a trigger, because such a trigger could omit significant loadings from antidegradation scrutiny.

In short, any trigger that allows more than a *de minimis* new or increased loading of a pollutant to bypass the antidegradation rule is inconsistent with antidegradation policy. Thus, a "new or increased permit limit" would be an appropriate trigger *only if* a new or increased permit limit is required by IDEM regulations for every significant new or increased loading of a pollutant of concern, including pollutants such as nitrogen and phosphorus.[34] IDEM has not, to date, shown that a new or increased permit limit is required by IDEM regulations for every significant new or increased loading of a pollutant of concern.

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applying the rule to non-exempt new or increased loadings, was agreed upon during IDEM's July 15, 2008 stakeholder meeting (see Antidegradation Stakeholder's Subgroup Meeting Summary, July 15, 2008, page 7).

[34] U.S. EPA has been clear that antidegradation procedures must not exclude nutrients.

III. Development of Antidegradation Rule Language

We commend IDEM for its efforts over the past year to meet with stakeholders and to understand their positions and concerns. The stakeholder subgroup meetings established and run by IDEM have brought the key stakeholders to the table, providing the opportunity for frank and open discussions, for agreement where agreement was possible, and for identifying and clarifying areas of irreconcilable disagreement.

Although IDEM provided the opportunity for stakeholder agreement, and had initially hoped that the stakeholder subgroup would forge agreements on key issues, in fact the stakeholder subgroup meetings have not produced much agreement on important issues. When this lack of agreement became obvious to the subgroup and IDEM, the agency reasonably responded by replacing debates over unresolved issues with presentations of stakeholder positions and proposed rule language.

We encourage IDEM to continue this stakeholder subgroup process until all issues of concern to the stakeholders are considered and areas of agreement and dispute are identified.

Thank you for considering our comments.

Sincerely,

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#08-764 (Antidegradation)
Mary Ann Stevens
Mail Code 65-40
Rules Section, Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

November 11, 2008

OFFICIAL COMMENT

Dear Ms. Stevens;

I am writing to address Indiana's Draft Pollution Rules that would allow polluting discharges into Lake Michigan.

I do not feel that Indiana should allow exemptions to companies which would allow them to justify new or increase discharges into the lake above background levels. There should be no exemptions even when there may be an economic development. The lake is the source of drinking water for far too many citizens to allow Lake Michigan to be degraded by any discharges from industry.

The new rules should also require that all new or increased discharges that exceed background pollution levels in Lake Michigan undergo thorough antidegradation review and justification.

Lake Michigan should be preserved and protected from new and increased pollution.

Thank you for your consideration,

Exemption 6

Exemption 6

[redacted] Exemption 6

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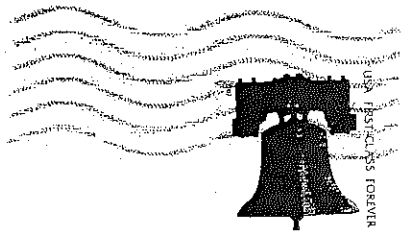

#08-764 (Antidegradation)
Mary Ann Stevens
Mail Code 65-40
Rules Section, Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

46204-2210

Third Coast Surf Shop
Ryan Gerard/Proprietor
ryan@thirdcoastsurfshop.com

22 S. Smith St.
New Buffalo, Mi. 49117
Phone: 269-932-4575
Fax: 269- 932-4576

October 30, 2008

OFFICIAL COMMENT

IDEM
Re: Increased Pollution in the Great Lakes

Dear IDEM staff,

Please consider this letter a firm NO to the idea of allowing local steel manufacturers and other polluters to increase the amount of unhealthy toxic waste they are allowed to dump into the Great Lakes Watershed. I am a small business owner whose livelihood relies directly on Lake Michigan and its beaches. If we continue to pollute the Lakes that we currently allow, let alone increase that rate, we are setting ourselves up for future disaster. We simply cannot afford the larger cost to our drinking water and to the incredible value the Great Lakes brings to our Midwest economy and quality of life. It is time to learn from our mistakes and find another way to sustain the profits of these giant corporations without endangering the very source that makes our lives in this region so special.

I am strongly opposed to any increase in the current effluent discharge dumped by any and all industries into Lake Michigan and the Great Lakes.

Thank you for your consideration and support.

Sincerely,

Ryan Gerard
Southern Lake Michigan region resident, small business owner and Great Lakes enthusiast

THIRD COAST SURF SHOP

Exemption 6

Exemption 6

[redacted]

OFFICIAL COMMENT

IDEM
OFFICE OF
WATER QUALITY
2008 NOV 10 A 8:49

November 4, 2008

Indiana Department of Environmental Management
c/o MaryAnn Stevens #08-764 (Antidegradation)
Mail Code 65-40 Rules Section/Office of Water Quality
100 North Senate Avenue
Indianapolis, IN 46204-2251

Re: *Great Lakes effluent discharge*

Dear IDEM staff,

I am strongly opposed to any increase in the current effluent discharge dumped by industries into Lake Michigan and the Great Lakes.

Please consider the fact that any increase in effluent discharges by US Steel, ArclorMIttal, or others is a dangerous step backward for the Great Lakes states and our country as a whole. We simply cannot afford the detrimental cost to our drinking water and to the incredible value the Great Lakes brings to our Midwest economy and quality of life, in place of short term economic gains that benefit only a few large corporations acting in their own self-interest. It is time to learn from our mistakes and find another way to sustain the profits of these corporations without endangering the very resources that make our lives in this region so special.

Sincerely,

Todd J. Haugh
Lake Michigan sailor and surfer

11/7/08 6:51

FAX to: 317.232.8406

OFFICIAL COMMENT

Title: Are You kidding Me?

Dear Indiana, Lake Michigan

Please donate the portion of your state to me so I can shut down all discharges into the Lake in which I receive my drinking water.

Sincerely,

Exemption 6

Exemption 6

[redacted] 11/7/08 6:51

FAX to: 317.232.8406

OFFICIAL COMMENT

Title: Are You kidding Me?

Dear Indiana, Lake Michigan

Please donate the portion of your state to me so I can shut down all discharges into the lake in which I receive my drinking water.

Sincerely,

Exemption 6

Exemption 6

1600 One American Square
Indianapolis, IN 46282
317.632.4406
317.262.4940
kwaite@indianaenergy.org

Indiana Energy Association

Fax

To: MaryAnn Stevens
Office of Water Quality
IDEM

From: Kerry Waite on behalf of Stan Pinegar

Fax: 232.8406 **Pages:** 3, including cover sheet

Phone: 233.8903 **Date:** 11/14/2008

☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

Indiana ENERGY Association

1600 ONE AMERICAN SQUARE, BOX 82065 INDIANAPOLIS, INDIANA 46282 317-632-4406 FAX 317-262-4940 www.indianaenergy.org

November 14, 2008

OFFICIAL COMMENT

#08-764 (Antidegradation)
MaryAnn Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Dear Ms. Stevens,

On behalf of the members of the Indiana Energy Association ("IEA") and individual non-member companies, including Dominion State Line Energy, Indiana Kentucky Electric Corporation, Wabash Valley Power, and Hoosier Energy REC, Inc., we appreciate the opportunity to provide comments on the Indiana Department of Environmental Management's ("IDEM") first notice of rulemaking concerning antidegradation standards and implementation procedures. The IEA is a trade association, whose membership includes 13 investor-owned electric and gas utilities and one charitable public trust gas utility, all operating in the state of Indiana. Collectively, the IEA members and individual non-members listed above are referred to in these comments as the "Indiana Utility Group" or "IUG."

The Indiana Utility Group takes this opportunity to provide our support on record for the comments submitted by Ms. Kari Evans on behalf of the Indiana Water Quality Coalition and the Indiana Manufacturers Association on this matter. The IUG particularly supports two suggestions made in those comments.

The first is that appropriate exclusions from full review be provided for facilities which have been required by state or federal regulation to install equipment to reduce air emissions and, because of these requirements, necessarily generate additional wastewater loadings. Ms. Evans' comments provide clear support for this position and we fully agree with those assertions.

The IUG would also emphasize the need for a reasonable and timely process for obtaining approvals. We agree with the assertions in Ms. Evans' comments that these rules must have a clear, step-wise process that includes reasonable timelines for approval. The utility industry requires regulatory certainty due to the substantial amount of planning, engineering and construction efforts associated with environmental controls at our plants. In addition, regulated utilities in particular must have regulatory certainty and timely decisions due to project approval and cost recovery requirements those utilities must pursue through the Indiana Utility Regulatory Commission.

Thank you for the opportunity to provide these comments. The IUG looks forward to continued participation in this rulemaking activity.

Respectfully submitted,

Stan Pinegar

Indiana Steel
Environmental
Group

IDEM
OFFICE OF
WATER QUALITY

2008 NOV 18 P 3:01

9305 Calumet Avenue, Suite F-1
Munster, Indiana 46321
Tel: 219-836-1000
Fax: 219-836-4100

SENT VIA CERTIFIED MAIL 7006 0810 0005 6098 0769

November 14, 2008

OFFICIAL COMMENT

Mary Ann Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Subject: **LSA Document #08-764 – 1st Notice of Comment Period**
Development of New Rules and Amendments to Rule Concerning Antidegradation Standards and Implementation Procedures

Dear Ms. Stevens:

I am writing this letter on behalf of the Indiana Steel Environmental Group (ISEG) to provide comments on LSA #08-764, Development of New Rules and Amendments to Rule Concerning Antidegradation Standards and Implementation Procedures.

The Indiana Steel Environmental Group is a coalition of Indiana steel companies established to focus on environmental issues of concern to its members. The Indiana Steel Environmental Group (ISEG) consists of membership from ArcelorMittal USA, Inc., ArcelorMittal Indiana Harbor, LLC, United States Steel Gary Works, United States Steel Midwest Plant, ArcelorMittal Burns Harbor LLC, and Nucor Steel Crawfordsville.

The Indiana Steel Environmental Group's primary concern regarding antidegradation relates to the practical impacts of implementing the program for discharges. If not properly implemented, the program could place severe restrictions on important social and economic development within the affected communities, without resulting in any significant benefit to water quality. This will seriously impair attempts to revitalize these communities through brownfield development and will compromise the competitiveness of existing industries by limiting their ability to expand or change technologies.

The antidegradation standard and implementation procedures for waters of the State should be crafted in a way that will be protective of the receiving waters and support the economic viability of existing industries in the area, and the affected communities.

It is critical that the rules contain appropriate de minimis provisions, so that minor increases are not subjected to an expensive, time-consuming regulatory review by IDEM before they can be authorized. Also, it is important for the rules to include appropriate exemptions to antidegradation review for important activities that have significant social or environmental benefits, which should not be delayed or possibly denied by the antidegradation process. These exemptions should include federally-developed technology based effluent limits at internal outfalls and increases in discharges that result from a regulatory requirement to install new air pollution control devices.

The ISEG member companies have been and continue to be involved with the IDEM external stakeholder workgroup that has been established for this rulemaking for industrial interests. The ISEG supports an antidegradation rulemaking that applies to all surface waters of the state and we support an applicability provision that uses a bright line trigger of only conducting antidegradation review when a discharger is requesting a new or increased discharge that requires a new or modified NPDES permit.

We believe that the "pollutant of concern" definition must be sufficiently clear to adequately define the universe of pollutants to which the antidegradation implementation procedures apply.

The ISEG supports a de minimis definition that will not be subject to further antidegradation review. Senate Enrolled Act 431 (2000) requires the Water Pollution Control Board to adopt a rule for outstanding state resource waters (OSRWs) that includes a de minimis quantity of additional pollutant load for which a new or increased permit limit is required and below which antidegradation implementation procedures do not apply. This de minimis concept should be applied to all surface waters. Tributaries to OSRWs should be treated as high quality waters unless or until they are specifically designated as OSRWs themselves.

With respect to de minimis technology based effluent limitations (DTBELs) that will be proposed in the rulemaking, the ISEG believes that the use of a case-by-case application of DTBELs is inefficient, time consuming, and will create lack of clarity in the process of issuing antidegradation decisions, and will lead to uncertainty regarding permit issuance.

The ISEG agrees with IDEMs proposal to expand the social or economic justification to include the positive benefits to the area of the discharges. For discharges that trigger an antidegradation review, we are supportive of the use of innovative projects that will result in an overall improvement of water quality in the watershed of the discharge.

In closing, the ISEG believes that a constructive antidegradation rule will contain reasonable triggers for review, appropriate exclusions from full review, and a sensible process for obtaining approvals.

Thank you for your consideration of these comments. If you have any questions please feel free to contact me at pmg@jorsm.com or phone at 219-836-1000.

Sincerely,

Patrick M. Gorman, P.E.
Facilitator, Indiana Steel Environmental Group

ArcelorMittal

NUCOR
SHEET MILL-CRAWFORDSVILLE

USS

Indiana Steel Environmental Group
c/o *Environmental Process Technologies, Inc.*
9305 Calumet Avenue, Suite F-1
Munster, IN 46321

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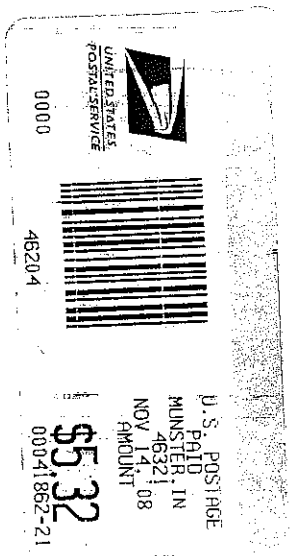

Mary Ann Stevens
Mail Code 65-40
Rules Section
IDEM – Office of Water Quality
100 North Senate Avenue
Indianapolis, IN 46204-2251

RETURN RECEIPT REQUESTED

46204#2222 C020

OFFICIAL COMMENT

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Fax (317) 231-7433

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November 14, 2008

#08-764 (Antidegradation)
MaryAnn Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Re: LSA Doc # 08-764
Antideg First Notice

Dear Ms. Stevens,

The Indiana Water Quality Coalition and the Indiana Manufacturers Association appreciate the opportunity to provide the following comments on the Indiana Department of Environmental Management's first notice of rulemaking concerning antidegradation standards and implementation procedures. The Indiana Water Quality Coalition (the Coalition) is a group of businesses with shared interests in Indiana regulations, policies and operating procedures concerning water quality. The Indiana Manufacturers Association (IMA) is a voluntary, non-profit trade association representing nearly 2,000 companies and 600,000 manufacturing jobs. Each of these entities has members or facilities in Indiana that may be affected by adoption of rules concerning antidegradation standards and implementation procedures.

Although IDEM has decided to begin the rulemaking process anew by publishing a first notice, there is a long history associated with antidegradation rulemaking in Indiana. These rulemaking activities date back to the late 1990s, following adoption of the Great Lakes rules, when IDEM undertook certain triennial review activities and convened a Water Quality Advisory Group to address various water quality issues. The Coalition actively participated in that effort, including development and submission of position papers on all aspects of the antidegradation review process in February 2002. We also submitted detailed comments on IDEM's March 2003 first notice of rulemaking and March 2005 second notice of rulemaking. All of these submissions were made following enactment of SEA 431 (Public Law 140-2000), and reflect the mandates of that law. These past submissions provide a complete description of our positions on each aspect of antidegradation review. However, for purposes of this new first notice, we believe the antidegradation rulemaking should be guided by the following three key principles:

REASONABLE TRIGGERS FOR REVIEW

Antidegradation review can be time-consuming and expensive. Also, it can introduce a substantial element of uncertainty into business planning, concerning both how long the process will take and what the outcome will be. For these reasons, the rule should contain an applicability provision that uses a brightline trigger of only conducting antidegradation review when a discharger is requesting a new or increased discharge that requires a new or modified NPDES permit. Furthermore, it is important to ensure that the review process focuses on more significant projects, rather than small projects that have little or no impact on pollutant loadings in waters. This focus makes sense for the simple reason that antidegradation addresses streams and lakes that possess water quality better than standards. The antidegradation program never allows any increases that would violate those standards, so there is no risk that increases will cause unsafe water quality. The General Assembly recognized this when it enacted SEA 431, which specifically obligates IDEM to define levels below which antidegradation review would not be required. IDEM included a de minimis level in its Great Lakes antidegradation rules, and other states across the country also have incorporated de minimis levels in their antidegradation rules. The new rulemaking effort should do the same.

APPROPRIATE EXCLUSIONS FROM FULL REVIEW

The main purpose of antidegradation review, for a new or increased discharge, is to ensure that the increase is necessary and will bring social or economic benefits. In some cases, it is clear, without doing such a review, that the increase meets these tests. For example, some facilities have been required, under the Clean Air Act, to install equipment to reduce their air emissions, which end up generating additional wastewater loadings. Or, a company may pursue cleanup of soil or groundwater contamination at a site, and part of the remedy is to discharge treated water to a nearby waterbody. Activities of this sort should not be required to undergo a full antidegradation review, with a detailed demonstration of necessity and socio-economic benefit. In this type of situation, requiring a full antidegradation review would be unnecessary, and could actually be counterproductive, by slowing down or even preventing actions that are environmentally productive.

REASONABLE PROCESS FOR OBTAINING APPROVALS

There are some projects, with significant new or increased discharges, for which a full antidegradation review will be necessary. However, it is important that this process be designed to ensure that worthwhile projects are not unnecessarily discouraged, impeded or even halted. That would have profound effects on business and municipal planning, with adverse impacts on economic growth and on society generally, with little or no benefit to water quality. To avoid that result, the rules need to establish a clear, step-wise process for antidegradation review that all stakeholders can understand and participate in at appropriate times. The criteria that the agency will use to decide if a project passes review need to be clearly spelled out, but should not be so rigid as to preclude consideration of case-specific factors. In the review process, due deference needs to be given to determinations made by local authorities concerning the social and economic benefits that would result from the proposed projects. Perhaps most importantly,

the process needs to have timelines built in, so the review takes place within a reasonable timeframe that will allow proposing entities to make plans without enduring enormous uncertainty.

In addition to these key guiding principles, we have several specific comments on the antidegradation rulemaking:

- General permits: The rulemaking must clearly address antidegradation review of each general permit rule, so it is clear that specific activities qualifying for a general permit rule do not need to go through individual antidegradation review. It is essential that IDEM address this issue so that Indiana may retain the integrity of the general permitting process. IDEM could address this issue through a number of methods, including opening up each general permit rule to make a finding that compliance with the rule meets the antidegradation standard; providing a detailed analysis of each general permit rule to be submitted as supporting justification when submitting the antidegradation rule to U.S. EPA for review and approval; and/or placing language in the applicability section of the antidegradation rule.
- Water quality certifications: The implementation procedures in this rulemaking are designed for and should only apply to activities subject to the NPDES permitting program. The rulemaking should specify that the implementation procedures do not apply to Clean Water Act Section 401 water quality certifications.
- De minimis technology-based effluent limitations (DTBELs): We urge IDEM to not pursue use of DTBELs in the antidegradation rulemaking. Development of DTBELs would be extremely time-consuming and of limited value in the application of antidegradation.
- Potential fiscal impact: The first notice contains a cursory description of the potential fiscal impact to comply with an antidegradation rulemaking. As this rulemaking progresses, IDEM must conduct a more thorough analysis to comply with the statutory requirements in IC 4-22-2-28 and IC 13-14-9-4.2. Although the total estimated economic impact is not yet known, it is clear that the draft rule has the potential to cost regulated entities in excess of $500,000. The cap on a single water quality improvement project is $500,000, and that does not take into consideration the costs associated with preparation of antidegradation demonstrations. The technical and socio-economic requirements for the antidegradation review could require significant resources. Furthermore, there will be costs associated with demonstrating that a discharger will not cause a significant lowering of water quality, because it falls under the de minimis threshold or one of the activities that do not need to undergo full review. For example, one discharger in the state had to spend in excess of $25,000 just to justify to IDEM that it would not cause a significant lowering of water quality.
- Treatment of exceptional use waters (EUWs): SEA 431 calls for IDEM to re-evaluate all EUWs to determine whether they qualify as outstanding state resource waters (OSRWs) or should be treated as high quality waters. Despite the clear intention of SEA 431 concerning phase out of the EUW category, the first notice appears to contemplate that EUWs will be subject to the same antidegradation standards and implementation procedures for OSRWs. We request that IDEM establish a plan and process for fulfilling the requirement to re-evaluate and re-designate EUWs.

We appreciate IDEM's consideration of these comments, and we look forward to working with the agency, other stakeholders, and the Water Pollution Control Board on development of appropriate draft rule language concerning Indiana's antidegradation standards and implementation procedures.

Sincerely,

Kari A. Evans

cc: Indiana Water Quality Coalition
Patrick Bennett, Indiana Manufacturers Association

NYSA L. HOGUE | Environmental Coordinator
Office: 317-261-5473 Fax: 317-261-5054

ipl an AES company

IDEM
OFFICE OF
WATER QUALITY
2008 NOV 14 P 12: 50

OFFICIAL COMMENT

November 14, 2008

Ms. MaryAnn Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

RE: Indianapolis Power and Light Company's Comments – Development of New Rules and Amendments to Rules Concerning Antidegradation Standards and Implementation Procedures– 1st notice #08-764

Ms. Stevens:

Indianapolis Power & Light Company (IPL) appreciates the opportunity to submit comments in regards to the above mentioned draft rule. IPL believes that a constructive antidegradation rule will contain reasonable triggers for review, appropriate exclusions from full review and public notice requirements, and a logical process for obtaining approvals. IPL offers the following recommendations regarding development of appropriate draft rule language for the second notice of comment period:

1. IPL supports an applicability provision that uses a bright-line trigger of only conducting antidegradation review when a discharger is requesting a nonexempt new or increased discharge that *requires* a new or modified NPDES permit (as initially proposed by the Indiana Water Quality Coalition ("Coalition")). This applicability mechanism will clearly define the rule, be composed of objective factors, and minimize varying interpretation. The rule should clearly establish that antidegradation review is only triggered when a discharge needs a new or increased permit limit. This trigger concept is already covered in 327 IAC 5-2-11.7, the antidegradation procedures for OSRWs in the Great Lakes System. A detailed explanation of the Coalition's position on the applicability of the antidegradation rule, to which IPL supports, was submitted to IDEM on August 12, 2008 and October 15, 2008. In addition, IPL requests that IDEM clarify that the implementation procedures only apply for NPDES permits and are not appropriate for or even applicable to Section 401 and Section 404 approvals. IPL believes that IDEM should separately address antidegradation for Section 401 and 404 approvals. IPL believes that that antidegradation review for Section 401 and 404 approvals should be fulfilled by the terms and conditions imposed by IDEM and the USACE as described as follows:
    a. Section 401 Water Quality Certification: IDEM regulates activities in lakes, rivers, streams, and wetlands to ensure that those activities maintain the chemical, physical, and biological integrity of these waters. Federal permits or licenses are required to conduct many of these types of operations, including discharging wastewater, altering flow paths, and placing fill materials into wetlands and waterways. The bulk of federal permits requiring Section 401 Water Quality Certification from IDEM are Section 404 Dredge and Fill Permits, which are issued by the U.S. Army Corps of Engineers (Corps). Section 404 of the Clean Water Act establishes programs to regulate the discharge of dredged and fill material into Waters of the United States. Dredge and fill activities are controlled by a permit process administered by the U.S. Army Corps of Engineers and overseen by the Environmental Protection Agency (EPA). This means that any person or company planning to discharge fill materials to Indiana wetlands or other water bodies such as streams, rivers, and lakes by filling, excavating, open-trench cutting, or

mechanical clearing, must receive Section 401 Water Quality Certification authorization from IDEM and must also apply for, and receive, a federal Section 404 Dredge and Fill Permit from the Corps. Furthermore, applicants must demonstrate to IDEM that the impacts and their applications are necessary. If an applicant is unable to completely avoid impacts, they must demonstrate how their proposed project and unavoidable impacts to wetlands and Waters of the U.S. have been minimized. Applicants must provide compensatory mitigation for any remaining adverse impacts to wetlands and other Waters of the U.S. Therefore, IPL believes that the current Section 401 and 404 programs maintain current water quality standards and provide compensatory mitigation in cases where adverse impacts cannot be avoided.

2. The de minimis concept should be based on a quantity of additional pollutant load for which a new or increased permit limit is required and below which antidegradation implementation procedures do not apply. The de minimis procedures should also consider alternate mixing zones for all high quality waters, including OSRWs and EUWs. Furthermore, IDEM should not rely on development of case-by-case DTBELs in support of this rule. This case-by-case evaluation would be extremely time-consuming and of limited value in the application of antidegradation. IPL supports the Coalition and Indiana Manufacturing Association ("IMA") position regarding the de minimis concept. A detailed explanation of the Coalition and IMA's position on the de minimis concept was submitted to IDEM on May 30, 2005 and October 15, 2008.
3. IPL believes that the current draft rule, which defines the terms "unused loading capacity" and "total loading capacity" to define de minimis, is the appropriate terminology to clearly define the de minimis concept. IPL urges IDEM to continue to use the unused and total loading capacity terms and do not use the term "assimilative capacity". Furthermore, IPL supports the Coalition and IMA's position regarding this issue. Detailed information associated with the above terminology was submitted by the Coalition and IMA to IDEM on October 15, 2008 (Attachment 5).
4. IPL supports a rule which exempts certain activities from full antidegradation review. IPL believes that full antidegradation review should only be required for projects that will result in a significant lowering of water quality. IPL supports the list of exemptions in the current draft rule, and believes the following activities should also be included in the exemptions list:
    a. Air Pollution Controls: New or increased wastewater discharges necessary to achieve reductions in air emissions should be exempted from antidegradation demonstration or streamlined review. IPL supports making the air pollution controls provision an exemption for several reasons:
        i. Any new wastewater loadings are the result of federally required air pollution controls; and are therefore "necessary to accommodate important economic or social development".
        ii. It may be very challenging for IDEM to perform technology review because the assessment of many advanced wastewater treatment technologies for air scrubbers, including flue gas desulfurization (FGD), is very complex. To support this statement, currently utilities and U.S. EPA are struggling to develop appropriately based effluent guidelines. In U.S. EPA's recent announcement that it is delaying revision of the steam electric power generating effluent guidelines, the agency stated that one of the reasons for the delay is because U.S. EPA wants to investigate plants which have recently began operating a new generation of FGS wastewater treatment technology that may achieve substantially better pollutant reductions than EPA has evaluated to date.
        iii. Exempting air pollution controls is consistent with the current antidegradation rule (327 IAC 5-2-11.3(b) (1) (C) (iii) (KK).

    In addition, IPL believes that a 30 day public notice period associated with exemption activities is not a necessary step in the permit process because these types of activities have already been determined by IDEM to have no significant lowering of water quality. Furthermore, the determination made by IDEM that these types of activities do not have a significant lowering of water quality is currently undergoing a public review period via the current rulemaking process. Therefore, IPL believes that an additional 30 day public notice period through a permit modification process serves no additional purpose.
    b. Variances: Discharges that have been granted variances by IDEM and/or U.S. EPA should be

exempted form the antidegradation review process because the application and review process associated with obtaining a variance is similar to the antidegradation demonstration and review process.

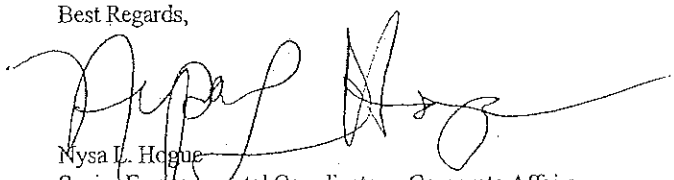
c. Non-Storm Water Discharges covered under individual NPDES permits: In the September 29, 2008, Federal Register, EPA issued a Notice of Availability for the new NPDES Multi-Sector General Permit (the "2008 MSGP") which replaces the 2000 MSGP (73 Fed. Reg. 56,572). Like the 2000 MSGP, the 2008 MSGP authorizes certain non-stormwater discharges. The non-stormwater discharges authorized by the 2008 MSGP are: discharges from fire-fighting activities; fire hydrant flushings; potable water, including water line flushings; uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids; irrigation drainage; landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling; pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed); routine external building washdown that does not use detergents; uncontaminated ground water or spring water; foundation or footing drains where flows are not contaminated with process materials; and incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling towers (e.g., "piped" cooling tower blowdown or drains). Because the 2008 MSGP, like the 2000 MSGP before it, specifically allows these non-stormwater discharges to be discharged from stormwater outfalls, IPL believes that these non-stormwater discharges should be exempted from the antidegradation process as these discharges do not contribute to a significant lowering of water quality.

d. General Permits: IPL believes that IDEM should clearly address antidegradation review of each general permit rule to ensure that specific activities qualifying for a general permit do not need to go through individual antidegradation review.

5. IPL urges IDEM to continue to seek input from the technical workgroup that has been established by IDEM during this rulemaking process. In addition, IPL urges IDEM to decide and clearly express its decisions at the time that the workgroup discusses each of the key issues concerning the antidegradation review process. This will ensure that the agency has the essential administrative record to justify the final rule to U.S. EPA and others that may seek review of the rule.

IPL appreciates IDEM's consideration of these comments associated with the development of the draft rule language concerning Indiana's antidegradation standards and implementation procedures. If you have any questions, please feel free to contact me at 317/261-5473.

Best Regards,



Nysa L. Hogue
Senior Environmental Coordinator – Corporate Affairs
Indianapolis Power and Light Company
One Monument Circle, Indianapolis, IN 46204
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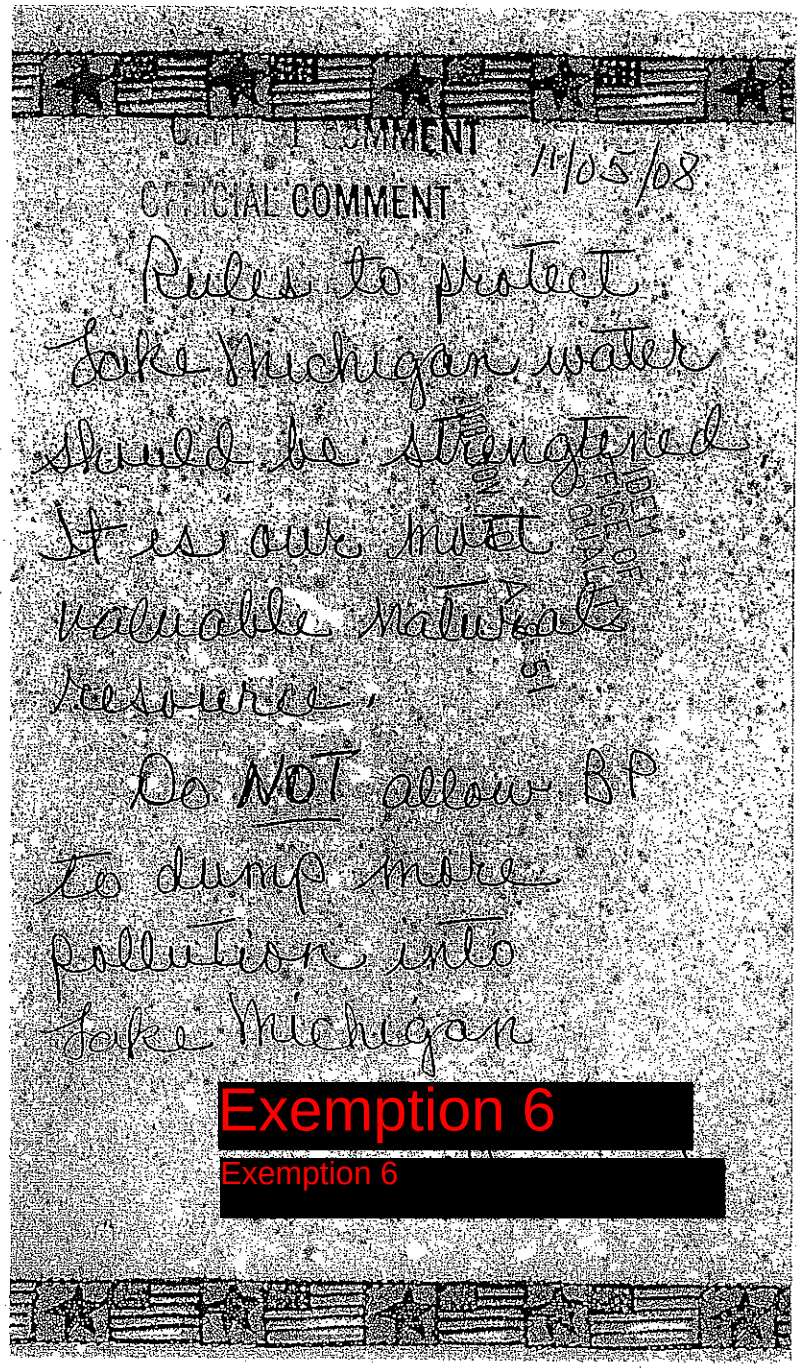
NLH
Enclosure


OFFICIAL COMMENT

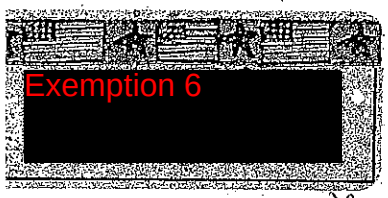
OFFICIAL COMMENT 11/05/08

Rules to protect
Lake Michigan water
should be strengthened.
It is our most
valuable natural
resource.

Do NOT allow BP
to dump more
pollution into
Lake Michigan

Exemption 6

Exemption 6



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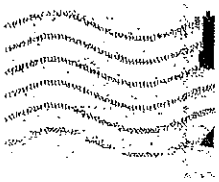

MaryAnn Stevens
#08-764 (anti-degradation)
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Mgmt
100 N. Senate Avenue
Indianapolis IN 46204-2251

46204+2273 C020

FAX/e-MAIL MEMORANDUM

Date: 11/14/08
Michigan City Sanitary District

Pages 11 w/ cover

From: Daniel R. Olson, Plant Superintendent — Tel/Fax: (219) 874-7799/874-8053

To: ☑ MaryAnn Stevens, Office of Water Quality, IDEM — Tel/Fax: (317) 232-8408.

☐ Alan J. Walus, General Manager

Subject: Comments on #08-764 (Antidegradation)

Please confirm by email to dolson@mcsan.org that comments were received.

Thank you.

1100 E. 8th St.
Michigan City, IN 46360

SANITARY
DISTRICT
OF MICHIGAN CITY

OFFICIAL COMMENT

November 14, 2008

#08-764 (Antidegradation)
MaryAnn Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

Re: First Notice of Comment Period
LSA Document #08-764

Ms. Stevens,

The Sanitary District of Michigan City has considered the listed alternatives to be considered within the rulemaking and presents the following comments for IDEM's consideration (alternatives may be paraphrased):

Alternative 1: Should antidegradation requirements apply to all of the surface waters of the state or should the current antidegradation requirements only applicable to the Great Lakes Basin be maintained?

Currently, there are two distinctively separate divisions within the State of Indiana in relation to water quality standards, i.e., inside and outside the Great Lakes Basin. The antidegradation standards and water use classifications differ for each area. The antidegradation standards for both areas are summarized in Table 1. It is clear from the side-by-side comparison that the antidegradation standards for each area of the state are not identical. The antidegradation standard for the Great Lakes Basin specifically addresses the three tiers required by the Clean Water Act, i.e., (1) impaired waters, (2) high quality waters and (3) outstanding national resource waters; and they both address thermal degradation. The rest of the State's standard only addresses high quality waters. Both areas' standards consider outstanding state resource waters and exception use waters are addressed outside of the Great Lakes Basin.

The most critical difference is the lack of specific reference to implementation and approval decision procedures outside of the Great Lakes Basin. This lack of formal procedures could potentially open the agency to criticism and concern over the consistency in applying the antidegradation standard. This deficiency in itself is justification for applying antidegradation requirements to the entire State.

Sanitary District of Michigan City: 1100 E. Eighth Street, Michigan City, IN 46360-2567 · Phone: (219) 874-7799 · Fax: (219) 874-8053
Refuse Department: 1801 Kentucky Street, Michigan City, IN 46360-4144 · Phone: (219) 873-1530 · Fax: (219) 873-1565

However, the Great Lakes Basin implementation procedures for OSRWs, 327 IAC 2-2-11.7, are interim procedures that were questioned during the recent BP AMOCO permit renewal in 2007. As a result, the Governor requested and received an evaluation of all antidegradation procedures, with the recommendation that this specific procedure be clarified for permittees and the general public. As a result, the basin implementation procedures need review and clarification.

Therefore, it is our recommendation that this alternative be considered as part of the current rulemaking provided that any revisions to the current Great Lakes Rules do not conflict with or regulate conditions of NPDES permits nor act as a deterrent to future social and economic growth.

Table 1: Side-by-Side Comparison of Indiana's Antidegradation Standard
Inside and Outside of the Great Lakes Basin

Standard Component	Inside the Great Lakes Basin	Outside the Great Lakes Basin
General Statement	For all surface waters of the state within the Great Lakes system, existing instream water uses and the level of water quality necessary to protect existing uses shall be maintained and protected. [327 IAC 2-1.5-4(a)]	For all waters of the state, existing beneficial uses shall be maintained and protected. No degradation of water quality shall be permitted which would interfere with or become injurious to existing and potential uses. [327 IAC 2-1-2(1)]
Impaired Waters	Where designated uses of the waterbody are impaired, there shall be no lowing of the water quality to the pollutant or pollutants that are causing impairment. [327 IAC 2-1.5-4(a)]	
High Quality Waters	Any surface water of the state within the Great Lakes system whose existing quality for any parameter exceeds the criteria established within this rule shall be considered high quality for that parameter consistent with the definition of high quality water found in this rule; and that quality shall be maintained and protected ... [327 IAC 2-1.5-4(b)]	All waters whose existing quality exceeds the standards established herein as of February 17, 1977, shall be maintained in their present high quality... [327 IAC 2-1-2(2)]
When Lowering of Water Quality May Be Considered	...unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation provisions under 327 IAC 5-2-11.3, that allowing lower water quality is necessary and accomodates *[sic.]* important economic or social development in the area in which the waters are located. In allowing such degradation, the commissioner shall assure water quality adequate to protect existing uses fully. [327 IAC 2-1.5-4(b)]	...unless and until it is affirmatively demonstrated to the commissioner that limited degradation of such waters is justifiable on the basis of necessary economic or social factors and will not interfere with or become injurious to any beneficial uses made of, or presently possible, in such waters. In making a final determination under this subdivision, the commissioner shall give appropriate consideration to public participation and intergovernmental coordination. [327 IAC 2-1-2(2)]
Implementation and Decision Procedures	Further, the commissioner shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. The commissioner shall utilize the antidegradation implementation procedures under 327 IAC 5-2-11.3 in determining if a significant lowering of water quality will be allowed. [327 IAC 2-1.5-4(b)]	
Exceptional Use Waters (EUWs)		This subsection establishes surface water quality for exceptional uses. Waters classified for exceptional uses warrant extraordinary protection. Unless criteria are otherwise specified on a case-by-case basis, the quality of all waters designated for exceptional use shall be maintained without degradation. [327 IAC 2-1-6(i)]
Outstanding State Resource Waters (OSRWs)	From the effective date of this section until the expiration date of 327 IAC 5-2-11.7, all high quality waters designated under section 19(b) of this rule as an outstanding state resource water shall be maintained and protected in their present high quality without degradation. Upon expiration of 327 IAC 5-2-11.7, all high quality waters designated under section 19(b) of this rule as an outstanding state resource water shall be maintained in their present high quality without degradation. [327 IAC 2-1.5-4(c)]	The following waters of high quality, as defined in subdivision (2), are designated by the board to be an outstanding state resource and shall be maintained in their present high quality without degradation: ... [327 IAC 2-1-2(3)]
Outstanding National Resource Waters (ONRWs)	High quality waters designated as an outstanding national resource water (such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance) shall be maintained and protected in their present high quality without degradation. [327 IAC 2-1.5-4(d)]	
Thermal Degradation	In those cases where the potential lowering of water quality is associated with a thermal discharge, the decision to allow such degradation shall be consistent with Section 316 of the Clean Water Act and 327 IAC 5-7. [327 IAC 2-1.5-4(e)]	Any determination made by the commissioner in accordance with Section 316 of the Clean Water Act concerning alternative thermal effluent limitations will be considered to be consistent with the policies enunciated in this section. [327 IAC 2-1-2(4)]

Alternative 2: How should the concept, de minimis lowing of water quality, be defined to facilitate a clear and consistent application and to eliminate further antidegradation review?

In the Water Quality Guidance for the Great Lakes System; Supplementary Information Document (SID)[1] the background for the concept of classifying an increased loading as de minimis included three criteria in the original proposed Guidance,

1. only non-BCCs will be released as a result of the proposed activity responsible for lowering if water quality;
2. the proposed lowering of water quality uses less that 10 percent of the available assimilative capacity; and
3. for pollutants contained in 40 CFR 132.2, Table 5, at least ten percent of the total assimilative capacity remains unused following the lowering of water quality.

According to the SID, EPA's intent in including the de minimis test in the proposed Guidance was to recognize that certain activities, although they may result in some lowering of water quality, will not lower water quality to such an extent as to result in a significant lowering of water quality; and thereby providing a means of reducing administrative burden on all parties associated with activities of little or no consequence to the environment.[2]

However, EPA did not include the de minimis test in the Final Guidance because non-BCCs were not addressed there. Instead, EPA permitted the States or Tribes to address non-BCCs individually as long as any de minimis approach was based on the criteria from the proposed Guidance. Indiana adopted the de minimis test with the Great Lakes System rules and included for both high quality waters, [327 IAC 5-2-11.4], and discharges tributaries of outstanding state resource waters, [327 IAC 2-2-11.7(b)(2)], the following criteria:

> The proposed increase in monthly average mass for a non-BCC (proposed monthly average mass – existing permitted monthly average mass) is…
>
> 1. less than 10% of the unused loading capacity; and
> 2. at least 10 % of the total loading capacity remains unused after the lowering of water quality; and
> 3. for tributaries to OSRWs ONLY, the discharge shall not cause a significant lowering of water quality in the OSRW.

Current Great Lakes Basin rules define total loading capacity for high quality waters and OSRWs that are streams as the product of the applicable water quality criterion times the sum of the existing effluent flow and the stream design flow for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass rate. For discharges to Lake Michigan, the total loading capacity is defined as the product of the applicable water quality criterion times the sum of the existing effluent flow and approved mixing volume for

[1] Water Quality Guidance for the Great Lakes System: Supplementary Information Documentation (SID), US EPA, Office of Water, EPA-820-B-95-001, March 1995, p 207

[2] Ibid, page 208.

Lake Michigan in the area where water quality is proposed to be lowered, expressed as a mass loading rate. [327 IAC 5-2-11.3(b)(1)(B)(iii)(AA); 327 IAC 5-2-11.7(b)(5)(A)]

Those rules also define unused loading capacity for high quality waters and all OSRWs as the amount of total loading capacity not utilized by the point source and nonpoint source discharges. The unused loading capacity is established at the time the request to lower water quality is considered. [327 IAC 4-2-11.3(b)(1)(B)(iii)(BB); 327 IAC 2-2-11.7(b)(5)(B)]

The problem with the existing language for total loading capacity lies in the use of "existing effluent flow". Instead the more appropriate definition would be the effluent design flow as defined in 327 IAC 5-2-11.4(a)(9). This change would make de minimis calculations consistent with total maximum daily loading and wasteload allocations. In addition, the definition for used loading capacity is unclear.

Thus, the following proposed definitions should be used to determine total loading capacity:

For high quality waters and OSRWs that are streams: total loading capacity is the product of the applicable water quality criterion times the sum of the effluent design flow, as determined by 327 IAC 5-2-11.4(a)(9), and the stream design flow, in accordance with 327 IAC 5-2-11.4(b)(3)(A), for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass rate.

For Lake Michigan: total loading capacity is the product of the applicable water quality criterion times the sum of the effluent design flow, as determined by 327 IAC 5-2-11.4(a)(9), and the approved mixing volume for Lake Michigan in the area where the water quality is proposed to be lowered, expressed as a mass rate.

The following definition for used loading capacity should be used:

For high quality waters and OSRWs that are streams: the used loading capacity is the sum of the existing mass permit limit for the pollutant of concern plus the product of the representative background concentration just upstream of the proposed new or increased discharge times the stream design flow, in accordance with 327 IAC 5-2-11.4(b)(3)(A), for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass rate.

For Lake Michigan: the used loading capacity is the sum of the existing mass permit limit for the pollutant of concern plus the product of the representative background concentration outside of the approved mixing volume times the approved mixing volume for Lake Michigan in the area where the water quality is proposed to be lowered, expressed as a mass rate.

De minimis for High Quality Waters: The unused loading capacity for all waterbodies becomes the total loading capacity minus the unused loading capacity. Applying the SID guidelines, a proposed or new increase in loading of a non-BCC to high quality waters,

Lake Michigan in the area where water quality is proposed to be lowered, expressed as a mass loading rate. [327 IAC 5-2-11.3(b)(1)(B)(iii)(AA); 327 IAC 5-2-11.7(b)(5)(A)]

Those rules also define unused loading capacity for high quality waters and all OSRWs as the amount of total loading capacity not utilized by the point source and nonpoint source discharges. The unused loading capacity is established at the time the request to lower water quality is considered. [327 IAC 4-2-11.3(b)(1)(B)(iii)(BB); 327 IAC 2-2-11.7(b)(5)(B)]

The problem with the existing language for total loading capacity lies in the use of "existing effluent flow". Instead the more appropriate definition would be the effluent design flow as defined in 327 IAC 5-2-11.4(a)(9). This change would make de minimis calculations consistent with total maximum daily loading and wasteload allocations. In addition, the definition for used loading capacity is unclear.

Thus, the following proposed definitions should be used to determine total loading capacity:

For high quality waters and OSRWs that are streams: total loading capacity is the product of the applicable water quality criterion times the sum of the effluent design flow, as determined by 327 IAC 5-2-11.4(a)(9), and the stream design flow, in accordance with 327 IAC 5-2-11.4(b)(3)(A), for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass rate.

For Lake Michigan: total loading capacity is the product of the applicable water quality criterion times the sum of the effluent design flow, as determined by 327 IAC 5-2-11.4(a)(9), and the approved mixing volume for Lake Michigan in the area where the water quality is proposed to be lowered, expressed as a mass rate.

The following definition for used loading capacity should be used:

For high quality waters and OSRWs that are streams: the used loading capacity is the sum of the existing mass permit limit for the pollutant of concern plus the product of the representative background concentration just upstream of the proposed new or increased discharge times the stream design flow, in accordance with 327 IAC 5-2-11.4(b)(3)(A), for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass rate.

For Lake Michigan: the used loading capacity is the sum of the existing mass permit limit for the pollutant of concern plus the product of the representative background concentration outside of the approved mixing volume times the approved mixing volume for Lake Michigan in the area where the water quality is proposed to be lowered, expressed as a mass rate.

De minimis for High Quality Waters: The unused loading capacity for all waterbodies becomes the total loading capacity minus the used loading capacity. Applying the SID guidelines, a proposed or new increase in loading of a non-BCC to high quality waters,

Corrected page read 12-5-08 MAS

including tributaries to an OSRW (or EUW), would be considered de minimis as long as all of the following are true:

1. the proposed increase in (or new) mass loading is less that 10% of the unused loading capacity as calculated above;
2. a minimum of 10% of the total loading capacity remains untouched; and
3. if the receiving waterbody is a tributary to an OSRW (or EUW), then no significant lowering of water quality shall occur in the OSRW (or EUW).

De minimis for OSRWs and EUWs: The next question is "What is considered significant lowering of water quality in an OSRW (or EUW)?" Certainly, OSRWs (or EUWs) should have a higher level of protection than high quality waters.

Therefore, we recommend that for OSRWs (or EUWs) that significant lowering of water quality be defined as when a new or increased loading for a pollutant of concern that exceeds the following criteria be considered a significant lowering of water quality for the OSRW (or EUW);

1. the proposed increase in (or new) mass loading is less that 5% of the unused loading capacity in the OSRW (or EUW); and
2. a minimum of 25% of the total loading capacity for the OSRW (or EUW) remains untouched.

The next question is "What, if anything, should act as a limit for the magnitude of the allowable de minimis lowering of water quality?" That is, as the receiving waterbody volume or design flow increases in relation to the existing and proposed increase in discharge flow, the mass that qualifies as a de minimis increase will, by the mathematics, become larger in magnitude. Should this mass increase have an upper limit?

We contend that the current rules already have an upper limit, depending upon the pollutant of concern and the manner in which the permit limits are applied to the discharge. If the permitted discharge is to a "zero flow" stream, i.e., the design flow for the receiving waterbody is zero or insignificant, then the permit limits are applied to the end-of-the-pipe. Consequently, the acute toxicity permit limit becomes FAV. This is also true when no mixing zone is allowed. Depending whether acute or chronic toxicity, the discharge must meet the following by existing rules:

		Rule
Outside of Great Lakes System		
For acute toxicity:	FAV, in undiluted discharge	327 IAC 2-1-6(a)(1)(E)
	AAC, outside of zone of initial dilution	327 IAC 2-1-6(a)(1)(E)
For chronic toxicity:	CCC, outside zone of initial dilution	327, IAC 2-1-6(a)(2)
Inside of Great Lakes System		
For acute toxicity:	FAV, in undiluted discharge	327 IAC 2-1.5-8(b)(1)(E)
	CMC, outside of zone of initial dilution	327 IAC 2-1.5-8(b)(1)(E)
For chronic toxicity, depending on the applicable criterion:	CCC, HNC, HNV, HCC or HCV, outside zone of initial dilution	327 IAC 2-1.5-8(b)(2)
	WC, 30-day average	327 IAC 2-1.5-8(b)(2)

We recommend that the above referenced rules are a reasonable limit to de minimis.

Alternative 3: Should de minimis technology-based effluent limitations (DTBELs), determined from federal effluent guidelines or IDEM's best professional judgment, be used when current rules do not address the pollutant of concern?

The concept of using a BPJ-based DTBEL for as described total phosphorus or ammonia-nitrogen is intriguing but vague.

We propose that IDEM develop a complete list of parameters proposed to be addressed using DTBELs and provide BPJ values and their derivation for review by the workgroup and other interested parties, along with clear examples on how the DTBELs would be applied. In addition, the application of DTBELs cannot conflict with the de minimis calculations discussed above. Finally, DTBELs for municipal permits would have to specify what treatment technologies are associated with the BPJ and if other equivalent technologies would be considered and how.

Alternative 4: Should the rulemaking expand the social and economic justification to include the positive benefits to the area of the discharge as well as the negative impacts?

The SID lists three sequential components to the antidegradation demonstration, with social and economic development being the last.[3] The first two are pollution prevention followed by alternative and enhanced treatment. The pollution prevention component is geared towards industrial dischargers, with municipal application through industrial pretreatment programs. The cost-effective pollution prevention component includes, but is not limited to,

- substitution of non-BCC or non-toxic chemicals for BCCs,
- application of water conservation techniques,
- waste source reduction within process streams,
- recycle or reuse of waste byproducts, and
- manufacturing process operational changes.

We believe that this component is considered by pretreatment communities when new industrial users or expansion of existing industrial processes are anticipated.

The second component's objective, i.e. alternative or enhanced treatment analysis, is intended to limit the actual degradation of the high quality water to the greatest extent practical. The analysis incorporates a cost-effective analysis to determine the least costly options for additional treatment with the greatest reduction in the pollutant of concern and proposed degradation. We believe that this process is an inherent component of any existing treatment plant expansion or design for new treatment facilities.

The third component is the social and economic benefit analysis. The SID states, "In determining whether or not a proposed activity will support important social or economic development, Tribes and States should consider the geographic area in which the significant

[3] Ibid, page 221.

lowering of water quality will occur, the current or baseline economic condition of the area, the net positive impacts that will result for the proposed activity and the possibility of other development occurring in the area that will result in similar economic and social benefits but will not cause a significant lowering of water quality."[4]

Therefore, the SID already required that the antidegradation demonstration consider the net positive impacts on the geographical area in which the significant lowering of water quality is proposed.

Of equal, if not greater importance, are the detailed demonstration requirements for net positive impacts. We would be concerned that the process could have the potential to become so unyielding that it acts as a deterrent to natural population growth, the growth of a community's tax and employment base, or threatens the implementation of cost-effective solutions to alleviate public health concerns.

Therefore, we recommend that net positive impacts to the social and economic benefits be included in the antidegradation demonstration with emphasis on streamlining the process for natural population growth, encouraging growth for a communities tax base and employment base, or threatens the cost-effective solutions to public health concerns.

Alternative 5: Under IC 13-18-3-2, if a significant lowering of water quality in an OSRW or EUW occurs as a result of new or increased discharge, then the discharger must submit an antidegradation demonstration and support a project that results in an overall improvement of water quality in the watershed of the discharge, or pay a fee, not to exceed $500,000, based on the cost necessary to reduce the increased pollutant loading to the background concentration.

This change is mandated by law and must be incorporated into the antidegradation implementation procedures throughout the State. The first concern for dischargers to a tributary of an OSRW or EUW is that the project or fee will be assessed without a justified and reproducible evaluation of significant lowering to the OSRW. The second concern is that new or increased loadings required in eliminating a public health concern, whether that loading is a result of natural population growth or a deliberate expansion to replace failing septic or mound systems, will require a project or fee over and above the cost associated with the treatment expansion.

Therefore, we recommend that a significant lowering of water quality to an OSRW or EUW be determined by the 5%/25% rule proposed under Alternative 2. Furthermore, when significant lowering of water quality in an OSRW or EUW is required in eliminating a public health concern, we recommend that the increased discharge from expanded treatment be considered as the water quality enhancement project for the watershed in lieu of a new project or payment of a fee.

Alternative 6: Should the process review the existing conditions and simplify those conditions that trigger an antidegradation evaluation?

[4] Ibid, page 223.

In the existing rules for the Great Lakes Basin, there are several activities that, by their nature, are assumed not to result in a significant lowering of water quality. There are two reasons for this: first, the activities are addressed in other portions of the rules (e.g. variances), and/or an existing NPDES Permit (general or discharge specific); and two, the activities will not result in a new or increased permit limit.

For high quality waters, these "exemptions" are found in 327 IAC 5-2-11.3(b)(1)(C). For BCCs, there must be a deliberate action that results in an increased or new loading of the BCC, [327 IAC 5-2-11.3(b)(2)].

For outstanding state resource waters (OSRWs), these "exemptions" are found in 327 IAC 5-2-11.7(b).

It is important to the operations and maintenance of POTWs that these "exemptions remain intact without additional levels of notification or public participation. To add those components could delay critical responses and result in greater degradation. The NPDES permit and existing rules should be used to the full extent to ensure efficient operations and maintenance of POTWs.

Therefore, we recommend that the triggers for antidegradation demonstration be as follows:

High quality waters	non-BCCs	New or increased permit limit
	BCCs	Deliberate action resulting in a non-domestic increase in loading.
OSRWs (EUWs)	non-BCCs	New or increased permit limit
	BCCs	Deliberate action resulting in any Increase in loading.

Furthermore, we recommend that the "exemptions" be retained from the Great Lakes Basin rules with the NPDES Permit, and/or other applicable existing procedures or rules as the determining factor regarding notification and/or public participation.

Alternative 7: Should the cap and cumulative cap on unused loading capacity change from existing rules?

As stated previously, we recommend the following cap and cumulative cap on unused loading capacity:

For high quality waters and tributaries to OSRWs (or EUWs) the cap for any de minimis lowering of water quality should be limited to 10 % of the unused loading capacity, provided that discharges to tributaries of an OSRW (or EUW) do not result in a significant lowering of water quality in the OSRW (or EUW).

For OSRWs (or EUWs), we recommend the cap for de minimis lowering of water quality be 5% of the unused loading capacity.

For high quality waters and tributaries to OSRWs (or EUWs), the cumulative cap is 90% (or 10% of the total loading capacity must remain unused). For OSRWs (or EUWs) the cumulative cap is 75% (or 25% of the total loading capacity must remain unused).

For significant lowering of water quality, approved through the antidegradation demonstration process, the cap or cumulative cap cannot exceed the recommended cumulative cap stated above. The individual lowering of water quality should be minimized through the three components of the antidegradation demonstration.

Thank you for the opportunity to provide comments and suggestions for the antidegradation rulemaking.

Sincerely,

Daniel R. Olson
Plant Superintendent
Sanitary District of Michigan City

Cc: Alan J. Walus, General Manager

NORTHWEST INDIANA FORUM
6100 Southport • Portage, IN 46368 • 219.763.6303 Phone • 219-763-2653 Fax

OFFICIAL COMMENT

November 9, 2008

Mary Ann Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

RE: LSA Document #08-764
1st Notice of Comment Period
Development of New Rules and Amendments to Rule Concerning Antidegradation Standards and Implementation Procedures

Dear Ms. Stevens:

Thank you for the opportunity to comment on the *Development of the New Rules and Amendments to Rule Concerning Antidegradation Standards and Implementation Procedures.* The Northwest Indiana Forum is a membership based, not for profit regional economic development organization. Our membership currently represents 123 industrial and commercial businesses, financial entities, universities and municipalities within Lake, Porter and LaPorte counties – a diverse group. In total, our membership reflects $40 Billion in commerce annually on behalf of the State of Indiana.

The Northwest Indiana Forum supports the Indiana Department of Environmental Management (IDEM) in collaboration with the Antidegradation Workgroup in the rulemaking process. Because it is critical that new or renewed permits result in environmental improvement in conjunction with economic development, the rule must provide an explicitly clear procedure where the expected outcome is certain. The antidegradation rule will set forth the conditions on issuance of permits for new and increased discharges to waters of the State of Indiana. Rules concerning antidegradation procedures for Lake Michigan were adopted in 1997 and have been revised several times since. The current rulemaking process will develop a statewide antidegradation rule.

A primary concern regarding antidegradation relates to the practical impacts of implementing the program for discharges. If the rule is not properly vetted with all stakeholder groups during its development, the resulting rule may not provide the clarity necessary to ensure issuance of permits that can withstand public scrutiny. Any delay in the permitting process could place severe restrictions on important social and economic development within the affected communities, without resulting in any significant benefit to water quality. Additionally permit issuance delays could seriously impair attempts to

revitalize the local communities through brownfield development and compromise the competitiveness of existing industries by limiting their ability to expand or change technologies.

It is critical that the rules contain appropriate *de minimus* provisions, so that minor increases are not subjected to an expensive, time-consuming regulatory review by IDEM before they can be authorized. Also, it is important for the rules to include appropriate exemptions to antidegradation review for important activities that have significant social or environmental benefits, which should not be delayed or possibly denied by the antidegradation process.

It is important to the economic development capability of the State of Indiana to provide environmental permitting certainty. As industries and municipalities consider capital improvement projects, it is imperative that the environmental permit applicants are able to rely on the environmental permit application and issuance process as defined by Federal and State law when considering the State of Indiana for such projects. The absence of environmental permitting certainty is a detriment to the economic development picture in Northwest Indiana and the State of Indiana as a whole.

The Northwest Indiana Forum looks forward to our continuing participation with IDEM and interested stakeholders in the development of this important rulemaking process.

Sincerely,

Kay L. Nelson

Kay L. Nelson
Director, Environmental Affairs

OFFICIAL COMMENT

IDEM
OFFICE OF
WATER QUALITY

2008 NOV -6 A 9:32

Dear Ms. Stevens,

As a business leader and a father I want to express my strong opposition to allowing increased levels of pollutants into Lake MI. While I support our need to become energy independent, we cannot do it at the expense of our greatest natural resource. As a business leader, I encourage you not to make a short term decision that will hurt Lake MI in the longer term. As a father, I ask you not take away the safety of being in Lake MI for my children and all those that love the Great Lakes.

What you are considering doing matters and I oppose it!

Thank you for your consideration.

Best Regards,

Exemption 6
Exemption 6

National Park Service
U.S. Department of the Interior

Indiana Dunes National Lakeshore

1100 N. Mineral Springs Road
Porter, IN 46304

219-395-1588 fax

INDIANA DUNES NATIONAL LAKESHORE Fax

Date: 11/13/08

To: MS. Mary Ann Stevens

Fax number: 317-232-8406

From: Superintendent, Constance J. Dillon

Phone number: 219-395-1699

Total pages: 3 (includes cover)

Subject: Draft Indiana Antidegradation Rules Comment

Comments:

United States Department of the Interior

NATIONAL PARK SERVICE
Indiana Dunes National Lakeshore
1100 N. Mineral Springs Road
Porter, Indiana 46304-1299

IN REPLY REFER TO:

OFFICIAL COMMENT

November 13, 2008

N3617(INDU)

#08-764 (Antidegradation)
Ms. MaryAnn Stevens
Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Ave.
Indianapolis, Indiana 46204-2251

Dear Ms. Stevens:

This letter is concerning the Draft Indiana Antidegradation Rules posted for public review beginning on November 7, 2008. Indiana Dunes National Lakeshore understands that the result of this rule may allow industry to increase the level of pollutants discharged into Lake Michigan.

We strongly support IDEM's efforts to comply with the federal Clean Water Act requirements by updating Indiana's water quality standards at least every three years, and developing an antidegradation rule for all surface waters of the state including Lake Michigan and its tributaries. We believe that any new state regulations should result in strong protection for all of Indiana's valuable water resources from any new or increased pollution above the current background levels. Concerning the Proposed Rules, we offer the following comments:

(1) Require any new or increased discharges into Indiana's surface waters that flow into Lake Michigan to go through complete antidegradation review and justification process.

(2) No degradation should be allowed that increases the background pollutant levels in Lake Michigan. If degradation that increases background pollutant levels is allowed for any reason then mitigation must be required.

(3) Few if any exemptions should be included in the rule that enables industry to avoid providing required justification for any new or increased discharges, even including minor increases.

We look forward to reviewing additional draft rules concerning antidegradation standards and implementation procedures, which will reduce pollution to Lake Michigan and be enforced by the state. If you have any questions concerning this response please contact Assistant Chief for Natural Resource Management Brenda Waters at 219-395-1552.

Sincerely,

for Constantine J. Dillon
Superintendent

cc:
Jay Glase, Great Lakes Area Fishery Biologist, National Park Service,
800 East Lakeshore Drive, Houghton, Michigan 49931

Steve Yancho, Chief of Natural Resources, Sleeping Bear Dunes National Lakeshore,
9922 Front Street, Empire, Michigan 49630

OFFICIAL COMMENT

Dear IDEM staff,

I am writing to show my concern for the proposed increase in effluent discharges by BP and others into Lake Michigan. When you consider what our Great Lakes mean to us in terms of our livelihood and ecosystem it seems irresponsible and careless to have such a shortsighted vision as to how we treat the lakes. We need foresight and strict policies so that we don't enable big corporations to exploit our greatest natural resources for their gain.

Also, there are many of us who use the lake for recreation purposes. In fact, there are a large number of people who use the area around Whiting, IN for water sports. We notice when there are chemicals in the water and even some have been sick from them. We should be improving the water quality in the lake instead of deteriorating it further.

I am rigidly opposed to any increase in the current effluent discharge dumped by industries into Lake Michigan and the Great Lakes.

Exemption 6

Great Lakes resident and enthusiast.

[redacted] Exemption 6

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For
Use A
In You

42USA
Alzheimer's

MaryAnn Stevens #08-764
Mail code 65-40
Indiana Dept. of Environmental Management
100 N. Senate Avenue
Indianapolis, IN 46204-2251

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